



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Appropriate Technology, Ltd.

**File:** B-233480

**Date:** January 23, 1989

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### DIGEST

1. Bidder, who is also the principal on the bid bond, cannot be his own surety since a surety necessarily must be distinct from the principal.
2. Where a solicitation requires a bid guarantee but protester submits a letter of credit which in fact is merely a revocable line of credit, and a promissory note which merely provides for the furnishing of a performance bond in the future upon acceptance of the bid, the bid properly is rejected as nonresponsive.

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### DECISION

Appropriate Technology, Ltd. (ATL), protests the rejection of its apparent low bid as nonresponsive for failure to provide an adequate bid guarantee as required by invitation for bids (IFB) No. GS-05-P-88-GAC-0131, issued by the General Services Administration (GSA) for janitorial and related services at the J.C. Kluczynski Federal Building and the U.S. Post Office, and window washing and trash removal services at the E. M. Dirksen Federal Building in Chicago, Illinois. ATL contends that the promissory note and letter of credit it submitted comply with the bid guarantee provisions of the solicitation. We deny the protest.

The IFB, issued June 27, 1988, required that each bidder submit with its bid a bid guarantee in the amount of 20 percent of the bid price. Additionally, the IFB required that the bid guarantee be furnished in the form of a firm commitment and stated that failure to furnish a bid guarantee in the proper form and amount by the time of bid opening may be cause for rejection of the bid. See Federal Acquisition Regulations (FAR) § 28.101-3(b) (FAC 84-12) and § 52.228-1 (FAC 84-27).

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Bid opening was July 28. ATL submitted as its bid guarantee a promissory note and a letter of credit. The promissory note was signed by the President of ATL on July 28. The note stated that the principals of ATL promised to provide ". . . 20% (\$313,433.40) of our bid price in Performance Bond and/or Letter of Credit in the same amount, within the Government's specified time period, if our bid for [the project] is accepted by the Government." The alleged letter of credit was issued by Performance Financial Services, Inc. of Vienna, Virginia on July 12, 1988. The letter stated that "a line of credit . . . for accounts receivable financing" was available to ATL up to \$1,600,000. Three additional contingencies were listed and Performance Financial reserved "the right to amend, modify or terminate this commitment at any time for failure to comply with program requirements or credit parameters."

GSA found the promissory note and letter of credit submitted by ATL nonresponsive and rejected the bid. GSA contends that neither the promissory note nor the letter of credit were firm commitments since the promissory note was conditioned on the government's acceptance of the bid, and the line of credit was revocable.

ATL contends that the promissory note and letter of credit it submitted are responsive. ATL argues that the note meets all general requirements of negotiability, and the contingencies stated in the letter of credit are standard contingencies. We do not agree.

A bid guarantee is a form of security assuring that the bidder will not withdraw a bid within the period specified for acceptance and will execute a written contract and furnish the payment and performance bonds required under the contract. FAR § 28.001 (FAC 84-12). Its purpose is to secure the surety's liability to the government for excess costs in the event the bidder fails to carry out these obligations. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce it. Freitas-Lancaster, Inc., B-230569.2, June 7, 1988, 88-1 CPD ¶ 539; Meridian Construction Co., Inc., B-230566, June 8, 1988, 88-1 CPD ¶ 544.

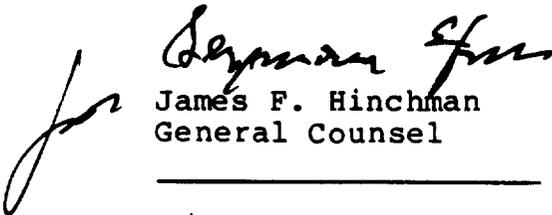
We first note that the bid was submitted in the name of ATL, signed by (and identified as) the president of the corporation, and that the promissory note was submitted in the name of the "Principals of [ATL]," signed by (and identified as) the same president of the corporation. Thus, it appears that the bidder is also the surety. However, a

surety necessarily must be distinct from the principal, as the surety undertakes to pay the debt or to perform an act for which the principal has bound himself, should the principal default. F&F Pizano--Request for Reconsideration, 64 Comp. Gen. 805 (1985), 85-2 CPD ¶ 234. Thus, a bidder, who is the principal on the bid bond, cannot be his own surety. Id.; see also Standard Form 28, Instruction 2 (covering the unacceptability of a partner as a surety where the partnership or an individual partner is the principal obligor on the bond).

Moreover, even assuming that the principals on the promissory note were different from the bidder, we think the promissory note submitted here was still unacceptable. The promissory note submitted by ATL promised to provide the government with 20 percent of the "bid price in Performance Bond and/or Letter of Credit . . . if our bid . . . is accepted." Thus, the note is merely a promise to provide a performance bond in the future upon acceptance of ATL's bid. The note does not secure the financial liability of the surety in the event the bidder withdraws its bid or fails to provide payment and performance bonds as required. Therefore, the promissory note clearly falls short of an adequate bid guarantee.<sup>1/</sup>

Finally, the letter of credit submitted by Performance Financial Services, Inc., on ATL's behalf does not promise to honor payment against ATL. Rather, the letter promises only to extend a line of credit to ATL and by its own terms, the letter is revocable. Accordingly, the letter of credit was materially defective and the bid was properly rejected as nonresponsive. See Freitas-Lancaster, Inc., B-230569.2, supra.

The protest is denied.

  
James F. Hinchman  
General Counsel

<sup>1/</sup> ATL also argues that the promissory note contained a typographical error in that the promise to provide 20 percent of the "bid price in Performance Bond," should have stated 20 percent of the "bid price or Performance Bond." This does not cure the deficiency since the promise is still contingent upon acceptance of the bid by the government. Further, a nonresponsive bid cannot be cured after bid opening to become responsive. See Servidyne, Inc., B-231944, Aug. 8, 1988, 88-2 CPD ¶ 121.