

McAuliffe



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pacific Glass, Inc.

File: B-233782

Date: February 28, 1989

DIGEST

Procuring agency reasonably rejected bid for nonresponsibility of individual surety on bid bond where the surety's integrity was called into question because he was indefinitely suspended at the time of bid opening, and subsequently debarred from contracting with the federal government.

DECISION

Pacific Glass, Inc., protests the rejection of its bid under invitation for bids (IFB) No. N62474-87-B-4859, issued by the Navy. The Navy rejected the protester's bid because one of its individual sureties was under indefinite suspension and excluded from contracting with the federal government.

We deny the protest.

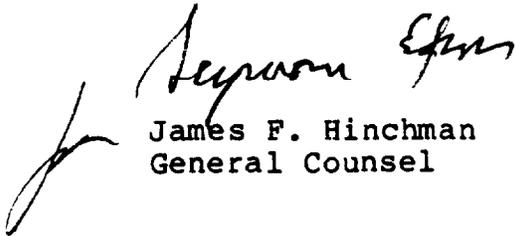
The solicitation was issued on September 19, 1988, for the replacement of windows at the Naval Training Center, San Diego, California. At bid opening on November 1, Pacific Glass submitted the apparent low bid of \$76,740. The second low bid, submitted by BCI, was \$78,333. The solicitation required bidders to submit a bid guarantee, equal to 20 percent of their bid. In response to the IFB bid guarantee requirement, Pacific Glass submitted two standard form No. 24 bid bonds from two individual sureties.

The contracting officer determined that one of the firm's individual sureties was listed in the General Services Administration's (GSA), September through November 1988 list of parties excluded from federal procurement programs and thus is precluded from receiving federal contracts or federally-approved subcontracts. Accordingly, the contracting officer determined that this surety was nonresponsible and rejected Pacific Glass' bid.

Individuals who appear on this GSA exclusion list are precluded from receiving government contracts, or from conducting business with the government as agents or representatives of other contractors. Here, at the time of bid opening, the surety in question was temporarily suspended, based on a federal court conviction on June 22, 1988, for false claims and false statements made in violation of 18 U.S.C. § 287, and § 1001 (Supp. IV 1986). The Navy reports that it found the surety nonresponsible based upon the surety's conviction, which indicated a lack of business integrity and honesty and cast serious doubt upon the surety's credibility and fiscal responsibility. The record also indicates that on November 29, the surety was debarred from contracting with the federal government because of this conviction.

In making a determination of nonresponsibility, the procuring agency is vested with a wide degree of discretion and business judgment and this Office will defer to the contracting officer's decision unless the protester shows that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. See Carson & Smith Constructors, Inc., B-232537, Dec. 5, 1988, 88-2 CPD ¶ 560. Pacific Glass does not allege any agency bad faith here. In our view, the surety's exclusion from federal contracting activities based upon a conviction for false claims and statements, provided the procuring agency with a reasonable basis to question the surety's integrity and the accuracy of his financial representations and, therefore, to make a nonresponsibility determination. Id.; See Gem Construction Co., Inc., B-233140, Feb. 13, 1989, 89-1 CPD ¶ ____.

The protest is denied.



James F. Hinchman
General Counsel