



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Interkon Corporation

**File:** B-250125

**Date:** December 15, 1992

R.K. Jonrowe for the protester.  
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.  
Tania L. Calhoun, Esq., Andrew T. Pogany, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

The failure to furnish a bid guarantee, required for all bids, including those under \$25,000, renders a bid nonresponsive.

### DECISION

Interkon Corporation protests the rejection of its bid as nonresponsive because of the firm's failure to submit a bid guarantee under invitation for bids (IFB) No. 614-111-92, issued by the Department of Veterans Affairs (VA). The solicitation was for roof repair at the VA Medical Center in Memphis, Tennessee. Interkon contends that its bid was improperly rejected because the solicitation did not require a bid guarantee for bids under \$25,000.

We deny the protest.

The IFB was issued on July 22, 1992, and contained four provisions relating to the bid guarantee. The solicitation specified on the first page in block 13.B that "an offer guarantee" is required. The solicitation also included a provision which stated that, for contracts in excess of \$25,000, a contractor must furnish a performance bond for 100 percent of the amount of the contract, as well as a payment bond. Section L of the solicitation stated that the cost range of the project was between \$25,000 and \$100,000. The solicitation also included the clause set forth at Federal Acquisition Regulation (FAR) § 52.228-1 entitled "Bid Guarantee" which specified that failure to provide a proper bid guarantee could result in the rejection of the bid and set forth the acceptable forms for the guarantee.

Five bids were received at bid opening; Interkon was the apparent low bidder with a bid of \$21,500. The contracting officer concluded that Interkon's bid was nonresponsive for failure to include a bid guarantee; this protest followed.

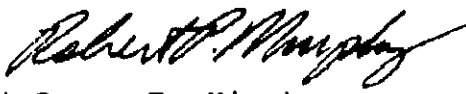
Interkon contends that the solicitation did not require a bid guarantee for a bid under \$25,000. The protester points out that, under the terms of the IFB, for contracts in excess of \$25,000 a contractor is required to furnish a performance bond and a payment bond, and that FAR § 28.101-1(a) states that a contracting officer shall not require a bid guarantee unless performance bonds or performance and payment bonds are also required. Interkon argues that since its bid was for less than \$25,000, performance and/or payment bids were not required; consequently a bid guarantee was also not required.

We find that this IFB, when read as a whole, required a bid guarantee for bids under \$25,000. Block 13.B of the IFB clearly stated that a guarantee was required. The IFB also stated that the failure to furnish the required bid guarantee in the proper form and amount by bid opening may require rejection of the bid. While the solicitation required that bidders furnish both performance and payment bonds for contracts over \$25,000, that section must be read in conjunction both with the advice in section L that the cost range of the project was between \$25,000 and \$100,000, and with block 13.B's specific requirement for a bid guarantee. It is the agency's estimate of the contract amount as reflected in section L that controls whether a bid guarantee need be submitted. Kenard Constr. Co., Inc., B-248830, Sept. 25, 1992, 92-2 CPD ¶ 207; LTT Constructors, Inc., B-229062, Nov. 13, 1987, 87-2 CPD ¶ 484. Thus, we think it clear that the agency intended to require a bid guarantee for all bids and that the blanket requirement for a bid guarantee contained in block 13.B of the IFB, along with the agency's estimate of the cost of the project, should have been sufficient to so inform all bidders. Id.

To the extent Interkon argues that VA could not, consistent with FAR § 28.101-1(a), require a bid guarantee with all bids when performance and payment bonds were required only for bids in excess of \$25,000, Interkon in essence is arguing that the solicitation was defective or, at a minimum, ambiguous. Protests of apparent alleged solicitation improprieties must be filed with our Office

or the procuring agency prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1992). Here, since this ground of protest was not raised until after the Interkon bid was rejected, it is untimely and will not be considered. We are advising the agency, however, that if it continues to require a bid guarantee in situations where performance and payment bonds are not required, it should follow the procedures for deviating from the FAR since FAR § 28.101-1(a) authorizes the imposition of a bid guarantee requirement only where performance and payment bonds also are required.

The protest is denied.

  
for James F. Hinchman  
General Counsel