



Office of the General Counsel

B-232197

August 10, 1988

MZP Inc.
P.O. Box 268
Vacaville, California 95696-0268

Attention: Mr. Mike Zervas
President

Gentlemen:

This is in reference to your letter dated August 4, 1988, received August 5, protesting the rejection of your bid submitted under invitation for bids (IFB) No. N62766-86-B-2315, issued by the Naval Facilities Engineering Command for the repair and painting of housing units in Guam. For the reasons stated below the protest is dismissed.

You state that the IFB, under which bids were opened on July 26, contained the following paragraph:

"Individual Sureties will not be accepted under the procurement pursuant to a waiver of the provisions of FAR [Federal Acquisition Regulation] 28.201, granted by the Assistant Secretary of the Navy, Shipbuilding and Logistics."

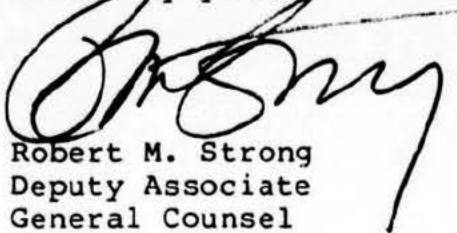
Nevertheless, you submitted a bid bond using two individual sureties. By letter dated July 27, which you state you received on August 3, the Navy advised you that your bid was rejected because you had failed to provide an acceptable bid guarantee under the terms of the IFB. In your protest to our Office, you question the contracting officer's authority to place in the solicitation a clause excluding individual sureties, arguing that such a clause is inconsistent with the FAR which you assert may be altered only by Congress.

Although your protest was filed in response to the rejection of your bid, that rejection was pursuant to a specific prohibition against the use of individual sureties which was a part of the IFB. You now are claiming the IFB prohibition was unauthorized. Since your protest actually concerns an alleged impropriety in the IFB which was apparent prior to bid opening, it should have been filed prior to bid opening in order to be timely under our Bid Protest Regulations.

4 C.F.R. § 21.2(a)(1) (1988). Since your protest was not filed until more than a week after bid opening, it is untimely and will not be considered on the merits.

Even if the protest had been timely filed, it would have been for dismissal as clearly without legal merit. 4 C.F.R. § 21.3(m). We recently have considered, and denied, several protests of restrictions upon or prohibitions against individual sureties in Navy procurements in the Pacific area, all part of a Navy pilot program conducted pursuant to the deviation from the FAR cited in the solicitation clause you have protested. Coliseum Construction, Inc., B-228597, Feb. 9, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 128; Service Alliance Systems, Inc., B-229655, Mar. 1, 1988, 88-1 CPD ¶ 211; Coliseum Construction, Inc., B-229801, Feb. 22, 1988, 88-1 CPD ¶ 182. Copies of these decisions are enclosed for your reference. We therefore already have recently ruled on the issue presented by your protest and have no reason to anticipate any different result in this case.

Sincerely yours,



Robert M. Strong
Deputy Associate
General Counsel

Enclosures