



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-230529.4; B-233708

March 20, 1989

Margaret A. Willis
FAR Secretariat
General Services Administration

Dear Ms. Willis:

This responds to your letter of November 16, 1988, requesting our comments on two Federal Acquisition Regulation (FAR) cases, FAR case Nos. 88-57 and 88-43.

FAR case No. 88-57 is a proposal to revise FAR Part 28 and add a clause at FAR section 52.228-11 concerning the use of individual sureties to secure bid, payment, and performance bonds. The explanatory material accompanying the proposal indicates that a task force established by the FAR councils found problems with the current methods of handling individual sureties. Existing requirements in this area are thought to be inadequate, particularly those involving the asset information individual sureties currently must provide on Standard Form 28.

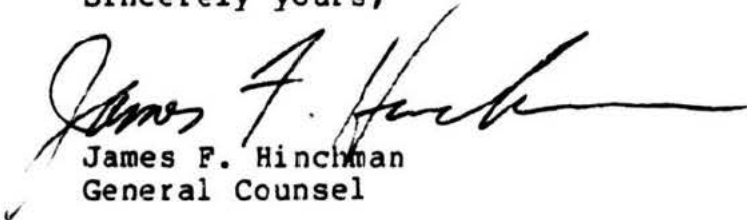
Under the proposed changes, the use of an individual surety would continue to be permitted, but only if the surety provided the government with a security interest in assets equal in value to the penal amount of the bond. The security interest generally would be in the form of a lien on fee simple real property or, for cash or securities, an escrow account in a financial institution. An escrow account would not be required if government securities in book entry form were pledged. The proposed changes also would provide for precluding particular individuals from acting as sureties if certain circumstances were found to exist.

In Altex Enterprises, Inc., B-228200, Jan. 16, 1988, 67 Comp. Gen. ___, 88-1 CPD ¶ 7, we sustained a protest involving requirements concerning individual sureties very similar to those now being proposed for governmentwide use. We agreed with the protester that the requirements were too stringent and unduly burdened those bidders who must use individual sureties, primarily small businesses. We concluded that in the absence of regulations authorizing such requirements or of a specific showing of a need for them, such requirements constitute an undue restriction on full and open competition. The proposed FAR change would provide the regulatory base that was lacking in Altex.

We are not currently aware of the exact nature and extent of the problems being encountered with the use of individual sureties. In this regard, however, the conference report on the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590, contains a request that this Office conduct an in-depth study of the matter and issue a report containing our recommendations by November of this year. H.R. Rep. No. 1029, 100th Cong., 2d Sess. 32 (1988). We suggest that action on a final rule changing the requirements for use of individual sureties be deferred pending completion of our study.

FAR case No. 88-43 is an interim rule that adds FAR subpart 4.9 and a clause at FAR section 52.204-3 to implement statutory and regulatory provisions requiring that specified taxpayer and contract information be reported to the Internal Revenue Service. We have no comments on these proposed changes.

Sincerely yours,



James F. Hinchman
General Counsel