



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract Services Company, Inc.

File: B-226774.3

Date: February 8, 1988

DIGEST

A low bid, which includes the required bid guarantee executed by surety in excess of its underwriting limitation without evidence of reinsurance in the bid is nonresponsive, where the amount of the surety's underwriting limitation is less than the difference between the low bid price and the next higher acceptable bid.

DECISION

Contract Services Company, Inc. (CSC), protests the rejection of its bid under invitation for bids (IFB) No. DTCG41-B-0006, issued on May 18, 1987, by the United States Coast Guard for facility maintenance services at the Reserve Training Center, Yorktown, Virginia. We deny the protest.

The IFB required bids to be accompanied by a bid guarantee in the amount of 20 percent of the total bid price for the "definite items" only. CSC's bid for the "definite items" was \$1,200,202, while the second low bid for these items was \$1,586,907. On its face, CSC's bid guarantee, a bid bond executed by CSC and American Surety and Casualty Company, stipulated the required percentage. However, the Coast Guard's review of the list of approved sureties in Treasury Circular No. 570 showed that the underwriting limitation of CSC's surety was \$225,000. This was \$15,040 less than the required bid guarantee amount of \$240,040.

On August 17, 1987, the Coast Guard notified CSC that it had determined CSC's bid to be "nonresponsive based upon an insufficient bid guarantee." On August 19, 1987, CSC formally protested this decision to the Coast Guard. CSC alleged that, although American had an underwriting limitation of \$225,000, the surety had a "valid reinsurance policy" in effect with Employees Reinsurance Corporation that permitted American to issue bonds up to \$2 million over its underwriting limitation. CSC attached its surety's "reinsurance policy" to the Coast Guard protest.

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On September 16, 1987, the Coast Guard denied CSC's protest. The reason for the denial was that "while the reinsurance agreement [appeared] to have been in effect" at the time of bid opening, it was not documented on the prescribed standard form (SF) 275 and had not been submitted with CSC's bid. CSC's protest to our Office followed. No award has been made because of the protest.

A bid guarantee's purpose is to secure the liability of a surety to the government if the bidder fails to fulfill its obligation to execute a written contract and to provide payment and performance bonds. Transcontinental Enterprises, Inc., B-225802, July 1, 1987, 66 Comp. Gen. _____, 87-2 CPD ¶ 193.

Where a bid bond is executed by a bidder and a corporate surety, the surety's name must appear in the Department of Treasury Circular 570 in order for the bid to be considered responsive. Federal Acquisition Regulation (FAR) § 28.202-1 (FAC 84-8); Siska Construction Co., Inc., B-218428, June 11, 1985, 85-1 CPD ¶ 669. The penal amount of the bond submitted with the bid should not exceed the surety's underwriting limit stated in the Department of Treasury Circular unless the amount which exceeds the limit is coinsured or reinsured. FAR § 28.202-1(a)(2). Where a surety requires reinsurance because a bond exceeds its underwriting limitation, a SF 275 must be submitted to obligate the reinsurance surety to the government. FAR § 28.202-1(a)(3). The SF 275 directly obligates the reinsurer to the government.

In this case, CSC submitted with its bid a bid guarantee issued by American in an amount in excess of its underwriting limitation as set forth in Treasury Circular No. 570. While the bid guarantee tendered in CSC's bid was on its face sufficient in amount to satisfy the 20 percent requirement, the surety was not authorized under Treasury Circular 570 to issue a bid guarantee for the government in that amount without reinsurance or coinsurance. The failure to provide a proper bid guarantee with a bid generally requires the bid to be rejected as nonresponsive. See FAR § 28.101-4 (FAC 84-5). Atlantic Maintenance Co., 54 Comp. Gen. 686 (1975), 75-1 CPD ¶ 108; Siska Construction Co., Inc., B-218428, supra.

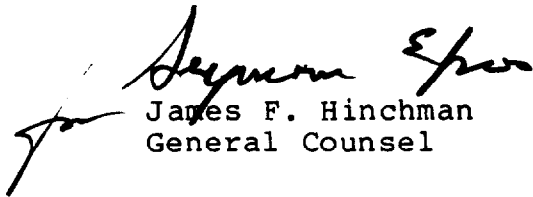
In previous cases, where bidders were permitted to submit proof of reinsurance after bid opening, Atlantic Maintenance Co., 54 Comp. Gen. supra, and B-176107, Nov. 16, 1972, the low bidder, who submitted a bid guarantee in an amount in excess of the surety's underwriting limitation, fell under an exception contained in FAR § 28.101-4(b). That provision

permits waiver of a bidder's failure to submit an adequate bid guarantee where:

"[t]he amount of the bid guarantee submitted is less than required but is equal to or greater than the difference between the bid price and the next higher acceptable bid."

However, CSC's bid guarantee is, in effect, only \$225,000--American's underwriting limitation. Since this amount is less than \$386,705--the difference between CSC's bid and the next higher acceptable bid for the "definite items," which the bid guarantee was to cover--CSC does not fall under this exception. Consequently, CSC's bid is nonresponsive.

The protest is denied.


James F. Hinchman
General Counsel