



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Service Alliance Systems, Inc.

File: B-229655

Date: March 1, 1988

DIGEST

Solicitation provision which, in accordance with a deviation from the Federal Acquisition Regulation (FAR), precludes the use of individuals as security for bid, payment and performance bonds is not objectionable where the deviation properly was authorized under the FAR, and is a temporary element of a pilot contracting program aimed at improving the efficiency of the agency's procurement efforts.

DECISION

Service Alliance Systems, Inc. (SASI), protests the provision in invitation for bids (IFB) No. N62766-86-B-2298, issued by the Department of the Navy, which provides that bonds executed by individual sureties would not be acceptable. The solicitation is for the repair and maintenance of family housing units at the Naval Air Station, Guam, Marianas Islands. SASI contends that the prohibition on individual sureties unduly restricts competition.

We deny the protest.

The IFB required the successful bidder to furnish performance and payment bonds within 15 days of contract award. Also, all bidders were required to furnish a bid guarantee in the proper form (which included bid bonds) and amount before bid opening. The IFB provided that individual sureties would not be accepted for bid, performance and payment bonds; only corporate sureties approved by the Department of Treasury or other security as provided for under Federal Acquisition Regulation (FAR) § 28.2 would be accepted.

We first address a procedural issue raised by the Navy. The Navy argues that SASI's protest should be dismissed because SASI is not otherwise eligible for award and is not, therefore, an interested party. The Navy bases this contention on the fact that, at the time it submitted its

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bid, SASI's secretary-chairman was on the Consolidated List of Debarred, Suspended, and Ineligible Contractors. This individual had been suspended, in his capacity with another company, based on an indictment charging him with several violations of Title 18, United States Code.^{1/} The Navy is, in effect, arguing that the ineligibility of this person to contract with the Department of Defense (DOD) extends to SASI due to its affiliation with him. The protester advises that this person has since resigned his office and directorship and sold his stock in SASI. The record before us on this matter is not extensive and we do not think the Navy has established that SASI would be ineligible for award of a contract under this solicitation. We, thus, find SASI to be an interested party for the purposes of this protest and, therefore, will consider the protest on its merits.

The restriction on individual sureties, although inconsistent with FAR § 28.202, was authorized after the DOD, under FAR § 1.404 (FAC 84-30), delegated to the Navy the authority to grant a class deviation from the FAR to permit the exclusion of individual sureties. The deviation was granted as part of a pilot program developed by the Navy to improve its contracting efforts, and will expire at the end of September 1988. We recently held that implementation of the deviation during this limited period, during which the Navy is gathering information on its effect and effectiveness, is appropriate and will not be questioned by this Office. See Coliseum Construction, Inc., B-228597, Feb. 9, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ ____.

Accordingly, SASI's protest is denied.


James F. Hinchman
General Counsel

^{1/} According to the Air Force, the agency which suspended the individual, the suspension was terminated on December 10, 1987, when the indictment against him was dismissed based on a guilty plea from another defendant. However, the Air Force has proposed debarment proceedings against the individual, who, thus, remains ineligible for award of any Department of Defense contracts.