Burkard

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kentucky Bridge and Dam, Inc.

File: B-236218

Date: November 2, 1989

DIGEST

Agency properly may reject as nonresponsive a bid accompanied by a bid guarantee in the form of an irrevocable letter of credit which expires prior to such time as is reasonably necessary to enable government to exercise its rights in the event bidder fails to comply with the solicitation requirement to furnish performance and payment bonds.

DECISION

Kentucky Bridge and Dam, Inc., protests the rejection of its low bid as nonresponsive for failing to provide an adequate bid guarantee as required by invitation for bids (IFB) No. N62766-88-B-2486, issued by the Department of Navy for the exterior painting of family housing units.

We deny the protest.

The IFB required that bidders submit a bid guarantee in the amount of 20 percent of the bid price or $3 million, whichever was less. The IFB contained the clause specified in the Federal Acquisition Regulation (FAR) § 52.228-1 (FAC 84-27), requiring bidders to submit bid guarantees in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or certain bonds or notes of the United States. The IFB required bidders, unless otherwise specified in the bid, to allow 90 days for acceptance of the bid and to give bonds required by the IFB within 15 days after receipt of the forms by the bidder. The IFB also cautioned bidders that failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

Kentucky Bridge and Dam was the apparent low bidder at the June 6, 1989, bid opening. Kentucky Bridge and Dam submitted with its bid an irrevocable letter of credit from the Pioneer Bank, Canmer, Kentucky. The letter of credit was effective from June 6, 1989, through September 8, 1989, a total of 95 days. By letter dated July 5, the Navy notified Kentucky Bridge and Dam that its bid was nonresponsive for failure to provide an adequate bid guarantee. The Navy determined the bid guarantee was inadequate because it was not effective for the entire bid acceptance period plus such time as would have been reasonably necessary for the Navy to exercise its rights in the event that Kentucky Bridge and Dam failed to comply with the requirement to furnish performance and payment bonds.

Kentucky Bridge and Dam protests that its bid was responsive because its bid guarantee was effective for the 90-day bid acceptance period. According to the protester, the Navy is trying to impose a requirement on bidders which is unstated in the solicitation and which has not been recognized previously by our Office.

A bid guarantee, including a properly drawn irrevocable letter of credit, is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and performance bonds required under the contract. Its purpose is to secure the surety's liability to the government for excess reprocurement costs in the event that the bidder fails to honor its bid in these regards. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce it. Kruckenberg Serv. Co., B-232337, Oct. 18, 1988, 88-2 CPD ¶ 366.

We agree with the Navy that Kentucky Bridge and Dam did not provide an adequate bid guarantee. Since a bid guarantee is used to protect the government in the event the awardee does not furnish the required performance and payment bonds, we have previously held that a bid guarantee in the form of an irrevocable letter of credit must remain available to the government for the entire bid acceptance period plus such time as is reasonably necessary for the government to exercise its rights if the bidder fails to furnish the required bonds. Id. Here, where the IFB required a 90-day bid acceptance period and required the awardee to furnish performance and payment bonds within 15 days after receipt of award, a bid guarantee limited to 95 days clearly expires short of the time frame needed for the government to exercise its rights if the bidder fails to furnish the required bonds. Therefore, the accompanying bid was properly rejected as nonresponsive.

Accordingly, the protest is denied.

James F. Hinchman
General Counsel