



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Akri Construction Services Corporation

File: B-241965

Date: February 26, 1991

Patrick J. Steele, Esq., Bunker, Byrum & Kimball, for the protester.
Alex Ahumada, Federal Bureau of Prisons, Department of Justice, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where protester alleges that agency was required to reject awardee's bid as nonresponsive based on awardee's submission of a bid guarantee in the form of a cashier's check--as permitted by Federal Acquisition Regulation (FAR) § 52.228-1, which was included in the solicitation's contract clauses section--rather than a bid bond--which was identified as the only acceptable form of bid guarantee in the notice to bidders section in the solicitation schedule--notwithstanding the fact that the language in the schedule takes precedence over the language in the contract clauses section since FAR § 28.204-2 explicitly permits persons required to furnish a bond to furnish a cashier's check instead.

DECISION

Akri Construction Services Corporation protests the award of a contract to Dynamac Corporation under invitation for bids (IFB) No. 116-0029, issued by the Federal Bureau of Prisons, Department of Justice, for asbestos air monitoring at the United States Penitentiary, Lompoc, California. Akri, the second low bidder, contends that Dynamac's bid should have been rejected as nonresponsive and thus that it is entitled to the award.

We deny the protest.

The IFB was issued on August 20, 1990. Parts I and III of the solicitation contained notices to the bidders that "a bid bond of 20% of the amount of the offer will be required with this bid." Part II of the solicitation contained Federal Acquisition Regulation (FAR) § 52.228-1, entitled "Bid Guarantee," which in part provides that bidders are required to furnish 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.

Eight bidders responded to the solicitation. The agency found that only two bidders, Dynamac and Akri, had submitted acceptable bid guarantees; Dynamac submitted a \$7,800 cashier's check payable to the agency to cover 20 percent of its \$39,000 bid price, and Akri submitted a \$13,000 bid bond to cover 20 percent of its \$48,266 bid price. Since Dynamac's bid price was lower than Akri's, the agency awarded the contract to Dynamac. Akri's protest to our Office followed.

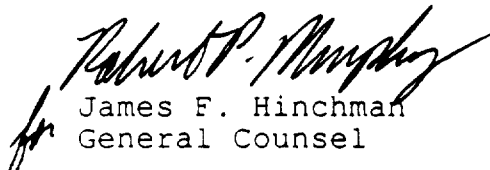
Akri contends that the agency should have rejected Dynamac's bid as nonresponsive because Dynamac did not comply with the solicitation requirement for bidders to furnish only bid bonds. The protester argues that notwithstanding the inclusion in the solicitation's contract clauses section of FAR § 52.228-1, the standard bid guarantee clause permitting bidders to submit bid guarantees in the form of a cashier's check, the language in Part I of the schedule stating that bidders were required to provide only one form of bid guarantee, namely bid bonds, takes precedence over the language permitting cashier's checks. To support its position, the protester refers to FAR § 52.214-29, "Order of Precedence," which was included in the solicitation and states that any inconsistency in the solicitation shall be resolved by giving precedence to the language in the schedule (excluding the specifications) over the language in the contract clauses.

We agree with the protester to the extent that he argues that the language in the schedule takes precedence over the contract clause language; we nevertheless find that if the agency had rejected Dynamac's bid because it contained a cashier's check as security instead of a bid bond, such rejection would have been improper.

FAR § 28.201(b) states that "solicitations shall not preclude offerors from using the types of surety or security, permitted by this subpart [which include any of the types authorized by FAR § 28.204], unless prohibited by law or regulations." FAR § 28.204-2 specifically provides that "any person required to furnish a bond has an option to furnish a certified or

cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds." (Emphasis added.) Thus, even though the solicitation effectively required the submission of bid bonds, FAR § 28.201(b) specifically authorizes submission of alternate forms of bid guarantee in the absence of an explicit restriction, authorized by law or regulation, on the acceptable types of security. See, e.g., Defense FAR Supplement §§ 228.101, 252.228-7007 (restricting types of bid guarantee on construction contracts as authorized by FAR § 28.101-1). Since there is no such restriction here and Dynamac furnished an acceptable alternate form of security in the requisite amount, the award to Dynamac was proper.

The protest is denied.


for James F. Hinchman
General Counsel