



**Comptroller General
of the United States**

Washington, D.C. 20548

Perry

Decision

Matter of: Trail-Blazer Construction

File: B-244144; B-244145

Date: June 6, 1991

Shawn E. Morrison for the protester.
Anne B. Perry, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Failure to furnish bid guarantee with a bid requires rejection of the bid as nonresponsive.

DECISION

Trail-Blazer Construction protests the rejection of its bids under invitation for bids (IFB) Nos. R6-6-91-35c and R6-6-91-36c, issued by the Department of Agriculture for trail construction in Mount Hood National Forest. The contracting officer rejected Trail-Blazer's bids as nonresponsive because the protester failed to furnish required bid guarantees.

We summarily dismiss the protests without obtaining an agency report since the protester's submissions do not provide a valid basis for protest. Bid Protest Regulations 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)).

The Department of Agriculture issued the solicitations on March 28, 1991, with an April 29 bid opening date. The IFBs stated that bidders "must submit a bid guarantee in the amount of 20 percent of the total bid price, but in no event shall the penal sum exceed \$3 million." (Emphasis added.) Trail-Blazer was the apparent low bidder under both IFBs. However, Trail-Blazer failed to furnish bid guarantees, and consequently, the contracting officer rejected Trail-Blazer's bids as nonresponsive.

Trail-Blazer contends that the agency improperly rejected its bids since Mt. Hood National Forest does not require bonds for bids under \$25,000, and its bids were \$19,884.92 and \$24,232 respectively. The protester argues that it has been awarded numerous other contracts to perform the same type of construction work in the past and has not been required to submit any bonding.

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When required by a solicitation, a bid bond is a material part of the bid which must be furnished by bid opening. A. D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194. Failure to furnish a bid guarantee in accordance with the solicitation's terms requires rejection of the bid as nonresponsive. Lava Tap Cleaning Servs., Inc., B-234728, May 18, 1989, 89-1 CPD ¶ 479. A contracting officer may not waive an offeror's failure in this regard since this would allow the bidder to decide, after bid opening, whether to make its bid acceptable which contradicts the clear purpose of responsiveness and jeopardizes the integrity of the competitive procurement system, which is more significant to the public interest than a financial savings in an individual case. 38 Comp. Gen. 532 (1959). Even if the agency acted improperly in the past and waived the bid bond requirement, this does not provide any basis to improperly waive the requirement under this procurement, since each procurement is a separate transaction. See GMI Indus., Inc.--Request for Recon., B-231998.2, Mar. 23, 1989, 89-1 CPD ¶ 297.

If Trail-Blazer now seeks to object to the inclusion in the solicitation of a bid guarantee requirement, its protest is untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to that date. 4 C.F.R. § 21.2(a)(1).

The protest is summarily dismissed.



Paul Lieberman
Assistant General Counsel