

Lebowitz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SAS Security Inc.

File: B-246836

Date: December 17, 1991

Victoria DeJesus for the protester.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly rejected the protester's bid as nonresponsive where the protester failed to furnish a bid guarantee with its bid as required by the terms of the solicitation.

DECISION

SAS Security Inc. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. GS-02P-91-CTD-0057, issued by the General Services Administration for guard services. The agency rejected the protester's bid as nonresponsive because the protester failed to furnish with its bid the required bid guarantee.

We dismiss the protest.

The agency issued the solicitation on August 5, 1991. The solicitation required each firm to furnish with its bid a bid guarantee, for example, a bid bond, in the amount of 20 percent of its bid price with the amount not to exceed \$3 million. The solicitation advised that a bidder's failure to furnish the required bid guarantee in the proper form and amount by bid opening would result in the rejection of the firm's bid.

Eight firms submitted bids by bid opening on September 5. Although the protester was the apparent low bidder, it failed to furnish with its bid the required bid guarantee in accordance with the terms of the solicitation. In this regard, the protester merely submitted a letter from an insurance broker which stated that the firm was retained by the protester in order to actively pursue bonding in

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anticipation of an award to the protester. Because the protester did not furnish a bid bond with its bid, the agency rejected the protester's bid as nonresponsive.

When required by a solicitation, as in this case, a bid guarantee 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 of a bidder to furnish a bid guarantee in accordance with the solicitation's terms requires rejection of the bid as nonresponsive. Trail-Blazer Constr., B-244144; B-244145, June 6, 1991, 91-1 CPD ¶ 543. Here, we find the agency properly rejected the protester's bid as nonresponsive because the firm failed to furnish a bid guarantee with its bid as required by the terms of the solicitation.

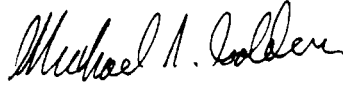
The protester argues that it was advised by the contracting specialist that a letter of intent to furnish bonding, as submitted by the firm, would be acceptable. However, the solicitation incorporated by reference Federal Acquisition Regulation (FAR) § 52.214-6, which requires bidders to request any explanation or interpretation of the solicitation in writing and cautions that oral explanations given before the award of a contract will not be binding. In the face of such advice, a bidder relies on oral explanations--especially those that are inconsistent with the solicitation's express terms--at its own risk. Cuernilargo Elec. Supply, B-240249, Nov. 2, 1990, 91-1 CPD ¶ 68.

To the extent the protester questions the rationale of requiring a bidder to furnish a bid bond with its bid prior to being awarded a contract, as opposed to requiring a bidder to provide a letter of intent to furnish bonding upon award, the purpose of a bid bond is to assure that a bidder will not withdraw its bid within the time specified for acceptance and it secures the liability of a surety to the government in the event the bidder fails to fulfill its obligations. U.S. General, Inc., B-242769, May 10, 1991, 91-1 CPD ¶ 456; Hydro-Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. A contracting officer may not waive a bidder's failure to furnish a required bid bond 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. - Trail-Blazer Constr., supra.

Finally, as to the protester's assertion that it had insufficient time prior to bid opening to secure a bid bond, this basis of 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. Bid Protest Regulations, 4 C.F.R. § 21.2(a)-(1) (1991), as amended by 56 Fed. Reg. 3759 (1991).

The protest is dismissed.



Michael R. Golden
Assistant General Counsel