



Comptroller General
of the United States

332118

Washington, D.C. 20548

Decision

Matter of: EVCO National, Inc.

File: B-257337.2

Date: August 11, 1994

DECISION

EVCO National, Inc. protests the proposed award of a contract to Raeuber Construction, Inc. under invitation for bids (IFB) No. F28609-94-BA012, issued by the Department of the Air Force for painting and floor repair work in family housing units at McGuire Air Force Base, New Jersey.

We dismiss the protest.

The solicitation required bidders to provide with their bids a bid bond in an amount equal to 20 percent of the bid price. The IFB also calls for the successful bidder to submit, prior to the commencement of contract performance, a performance bond in an amount equal to 100 percent of the contract price, and a payment bond of \$2.5 million, when the contract price exceeded \$5 million.

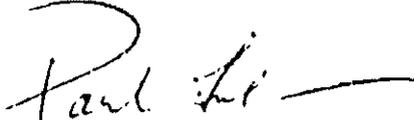
Seven bids were received in response to the solicitation, with Raeuber submitting the apparent low bid of \$5,014,021.59; Raeuber's bid included the required bid bond. EVCO protests that the proposed award to Raeuber is improper because the company that issued Raeuber's bid bond will be unable, due to its underwriting limit, to issue the necessary payment and performance bonds.¹

The allegation, that Raeuber should not receive the award because of the alleged financial inability of its surety to issue payment and performance bonds, pertains to whether

¹The penal amount of the bond should not exceed the surety's underwriting limit stated in the Department of Treasury Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies." If the penal amount exceeds the underwriting limit, the bond will be acceptable only if the amount which exceeds the specified limit is coinsured or reinsured, and the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer. Federal Acquisition Regulation § 28.202(a)(2).

Raeuber can be determined to be responsible. Harrison Realty Corp., B-254461.2, Dec. 30, 1993, 93-2 CPD ¶ 345; T&A Painting, Inc., 66 Comp. Gen. 214 (1987), 87-1 CPD ¶ 86. Here, the awardee was not required to submit the bonds until the time of commencement of performance, and as a general proposition, a matter that relates to responsibility may be satisfied at any time prior to award. ADC Ltd., B-254495, Dec. 23, 1993, 93-2 CPD ¶ 337. While there is currently no basis to consider EVCO's protest because the contracting officer has made no determination of responsibility concerning Raeuber, Southeast Medical Alliance, B-242034, Dec. 17, 1990, 90-2 CPD ¶ 495, even if the contracting officer had made this determination, our Office will not review an affirmative determination of responsibility absent circumstances not present here. 4 C.F.R. § 21.3 (m) (5) (1994).

The protest is dismissed.



Paul I. Lieberman
Assistant General Counsel