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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-218199 **DATE:** April 22, 1985
MATTER OF: Hispanic Maintenance Services

DIGEST:

1. A bid cannot be rejected as nonresponsive on the basis that individual sureties' affidavits and other supporting financial statements which accompanied the bid bond were defective in form and content. Responsiveness is determined from the bidding documents at bid opening, and if the bid bond itself as submitted is proper on its face, the bid is responsive, and the acceptability of the sureties may be established any time before award since it concerns a matter of responsibility.
2. Allegations that a contracting officer previously rejected the low bidder's sureties on another procurement, that the contracting officer relied on outdated information in determining a surety's net worth, that the agency unreasonably delayed the award of a contract under another protest, and the like, do not show bad faith on the part of the contracting officer in determining the sureties to be responsible since a showing of bad faith requires virtually irrefutable proof that the contracting officer had a specific and malicious intent to injure the protester.

Hispanic Maintenance Services (HMS) protests the award of contract No. N62470-84-C-2113 for custodial services by the Department of the Navy to DOD Contracts, Inc. HMS contends that DOD's bid is nonresponsive because the individual sureties' affidavits and other financial statements that accompanied DOD's bid bond were defective in form and content. We deny the protest.

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HMS alleges that while the bid bond itself (Standard Form 24) was properly executed for the appropriate penal sum by DOD's individual sureties, certain documents accompanying the bid bond, specifically the "Affidavit of Individual Surety" and "Certificate of Sufficiency" (Standard Form 28), and the financial net worth statements of the individual sureties, were improperly executed and were otherwise deficient. These documents, however, are separate documents from the bid bond itself and serve solely as aids to the government in determining the responsibility of an individual surety. See 52 Comp. Gen. 184 (1972). Therefore, the presence of defects in these documents does not affect bid responsiveness. See Jets, Inc., B-194017, Apr. 16, 1979, 79-1 CPD ¶ 269. DOD's bid is therefore responsive to the solicitation's bonding requirement. CWC Inc., B-209383, Oct. 19, 1982, 82-2 CPD ¶ 347.

The acceptability of an individual surety is a matter of responsibility which may be established anytime before contract award. Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581. Our Office does not review affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of the procurement officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Lake Shore, Inc., B-213877, Dec. 22, 1983, 84-1 CPD ¶ 14.

HMS also argues that we should here find "bad faith" on the part of Navy officials principally because the same purchasing office has previously rejected a DOD bid in another procurement for bonding deficiencies so that the Navy is well aware of the net worth of DOD's sureties; that the Navy unreasonably delayed awarding the contract during the pendency of a prior protest filed by DOD under this solicitation; and that the contracting officer relied on outdated information in finding the net worth of DOD's sureties acceptable. According to HMS, these allegations "strongly suggest" bad faith on the part of Navy officials.

The protester bears a heavy burden of proof when alleging bad faith on the part of government officials; it must show by virtually irrefutable proof that these officials had a specific and malicious intent to injure the

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protester. Kalvar Corp. Inc. v. United States, 543 F.2d 1295, 1301 (Ct. Cl. 1976). We find it sufficient to state that there is no indication whatsoever in the record to even remotely suggest that the protester has met this standard.

Finally, HMS alleges that DOD supplied false information to the Navy in contravention of 18 U.S.C. § 1001 (1982). We merely note that the cited statute imposes criminal penalties for knowingly making false statements to the government and that such matters are outside the scope of our bid protest function and should be referred to the Department of Justice. See E.C. Campbell, Inc., B-204253, Feb. 2, 1982, 82-1 CPD ¶ 76.

The protest is denied.

for Seymour E. Egan
Harry R. Van Cleve
General Counsel