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DECISION

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

FILE: B-218604.2

DATE: June 6, 1985

MATTER OF: Total Maintenance, Inc.--Request for Reconsideration

DIGEST:

1. 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 this concerns a matter of responsibility.

2. The General Accounting Office does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of government officials or that definitive responsibility criteria may not have been applied.

Total Maintenance, Inc. (TMI), requests reconsideration of our dismissal of its earlier protest in connection with invitation for bids (IFB) No. 85-09-023, issued by the General Services Administration (GSA) for building maintenance services. That protest was dismissed on May 6, 1985, for failure to state a basis for protest. TMI asks for reconsideration on the basis of further information it has recently received. We affirm the original dismissal.

TMI's first protest objected to any award to Professional Janitorial Services (Professional), the low bidder, or to Reliable Janitorial Services (Reliable), the second low bidder, and contended that neither was qualified to perform the services. TMI also contended that Reliable's bid was nonresponsive because of an allegedly improper performance bond and that its performance on prior contracts had been unsatisfactory.

TMI submitted no details as to why the performance bond of Reliable was improper. TMI's challenge to the capabilities of the two low bidders raised an issue with regard to the contracting officer's possible affirmative determination of responsibility for one of the bidders. Our Office, however, does not review protests concerning such determinations unless there is a showing of possible fraud or bad faith on the part of government officials or

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that definitive responsibility criteria in the solicitation may have been misapplied. Auchter Industries, B-216841, Nov. 30, 1984, 84-2 C.P.D. ¶ 593. TMI's protest did not demonstrate that either exception was applicable and the protest was dismissed without an agency report being obtained.

TMI's request for reconsideration indicates that Professional's bid has been withdrawn because of a mistake and the protest against the award to that firm is therefore academic and will not be considered.

With respect to Reliable's responsiveness, TMI has now submitted a copy of Reliable's bid bond (Standard Form 24), signed by three individual sureties. TMI has also submitted executed and certified copies of the "Affidavit of Individual Surety" and the "Certificate of Sufficiency" (each in Standard Form 28) for each surety but states that the contracting office informed it that the current, certified, audited financial statements of each surety that were also required had not been submitted with Reliable's bid bond. For that reason, TMI contends that Reliable's bid was nonresponsive. TMI has apparently abandoned its contention that Reliable's performance bond was improper.

The Standard Form 28 and the financial statements are separate from the bid bond, serving only to assist the contracting officer in determining the responsibility of the surety, and does not affect the responsiveness of the bid itself. Hispanic Maintenance Services, B-218199, Apr. 22, 1985, 85-1 C.P.D. ¶ 461. The acceptability of the sureties therefore is a matter of responsibility which may be established at any time prior to contract award. Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 C.P.D. ¶ 581. Thus, as the bid bond submitted by Reliable with its bid was in order, the bid was responsive.

In its request for reconsideration, TMI has submitted no new information on the responsibility of Reliable other than a GSA letter confirming that Reliable's unsatisfactory performance on three previous contracts resulted in a default termination of one and GSA's failure to exercise the options on the other two. This information does not change the fact that TMI's challenge to Reliable's capability raises an issue of responsibility which we will not review under the facts of this case.