

APD ALERT



WAIVER OF BID GUARANTEES ON 8(a) CONTRACTS

Purpose

The purpose of this Alert is to provide guidance on the requirements for bid guarantees (or bid bonds as they are commonly referred to) when contracting for construction with 8(a) firms.

References

FAR 19.8, Contracting With the Small Business Administration (The 8(a) Program)

FAR 28.101, Bonds and Other Financial Protections

FAR 28.101-1, Bid Guarantees – Policy on Use

Background

FAR 28.101-1(a) states that a bid guarantee is required when a performance or performance and payment bond is required. However, FAR 28.101-1(c) allows the chief of the contracting office to waive the requirement for a bid guarantee if it is in the Government's best interest for a specific acquisition. Such specific acquisitions would include overseas construction and sole source contracts.

Bid guarantees are required on all Federal construction contracts over \$150,000 to assure that the bidder will not withdraw its bid during the acceptance period and will provide performance and payment bonds. They protect the Government from loss should the successful bidder fail to secure performance and payment bonds, which would force the Government to award to the next lowest responsive and responsible bidder. A bid guarantee provides financial assurance that the bid has been submitted in good faith, that the contractor intends to enter into the contract at the price offered, and will provide the required performance and payment bonds.

In the case of 8(a) sole source construction acquisitions, the Contracting Officer (CO) will have already conducted market research prior to making an offer to the U.S. Small Business Administration and entering into negotiations with an 8(a) firm. The research should provide the CO with enough information to determine that the selected company has adequate bonding levels and capacity to acquire the necessary bonds, the requisite financial capability, sufficient experience and resources, satisfactory record of business integrity and ethics, and the intent to perform the contract. Consequently, there should be no need for a bid guarantee.

Procedures

In light of the above, however, each CO must make the decision whether or not to require a bid guarantee. If it is determined to waive the requirement, the CO must document the decision with the written approval of the Business Service Center (BSC) Acquisition Branch Chief. A sample letter is attached.

Under no circumstances, however, shall performance and payment bonds be waived for any construction contract.

Further, if the requirement for a bid guarantee is waived, the solicitation and resultant contract must contain the clause at FAR 52.228-1, Bid Guarantee. This clause allows for the termination of the contract should the contractor fail to provide performance and payment bonds in accordance with the contract requirements.

Contact Information

Acquisition Programs and Oversight Branch, E-mail at APOB@ars.usda.gov or phone at 301-504-1725.

Issue Date: August 2012

APD Alert 2012-12

SUBJECT: Waiver of Bid Guarantee Requirement
Solicitation No. (Insert number)

TO: (Insert name)
Chief, Acquisition Branch
Eastern Business Service Center

FROM: (Insert name)
Contracting Officer

In accordance with FAR 28.101-1(c), Bid Guarantees, Policy on Use, this is a request for a waiver for the requirement of bid guarantee for Solicitation No. (Insert number), with (Insert name of 8(a) contractor) for the (description of project) at (name and location, city and state). This request is based on the following:

1. I have conducted market research and a responsibility check and determined that the contractor has the capability to acquire the necessary performance and payment bonds in the appropriate amount, the requisite financial capability, sufficient satisfactory experience and resources, satisfactory record of business integrity and ethics, and the intent to perform the contract. Additionally, the contractor has previously performed work of the same or similar nature for other organizations in a satisfactory manner.
2. The requirement was approved as an 8(a) set-aside by the (Insert location/name of office) District Office of the U. S. Small Business Administration (SBA) on (Insert date).
3. The SBA has determined the contractor to be responsible with the requisite capabilities to satisfactorily perform the work.
4. The contractor does not appear on the Excluded Parties List System (EPLS).

RECOMMENDATION:

In accordance with FAR 28.101-1(c), the chief of the contracting office may waive the requirement to obtain a bid guarantee if it is determined that such a guarantee is not in the best interest of the Government for a specific acquisition.

Based on the above information, a bid guarantee for this particular acquisition is not in the best interest of the Government. It is, therefore, recommended to waive the bid guarantee requirement

CONCUR:

(Insert name) Chief
Acquisition Branch
Eastern Business Service Center

Date