

DECISION



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

**FILE: B-205823; B-205843; DATE: September 9, 1982
B-206469**

MATTER OF: Dan's Janitorial Service, Inc.

DIGEST:

1. In determining the acceptability of an individual bid bond surety, an agency may consider, under appropriate circumstances, the surety's failure to disclose other bond obligations on the Affidavit of Individual Surety, Standard Form 28, as such disclosure is necessary to enable the contracting officer to make informed judgments concerning a surety's financial soundness.
2. Where the record indicates a continuing pattern among certain individual bid bond sureties not to disclose outstanding bond obligations on the Affidavit of Individual Surety, Standard Form 28, an agency has a reasonable basis to reject the bidder's sureties as unacceptable.
3. The question of the acceptability of an individual bid bond surety is one of bidder responsibility, not responsiveness.
4. An allegation that a contracting officer's rejection of a protester's individual bid bond sureties was due to bias is not supported by independent evidence where GAO finds that the contracting officer's actions were reasonable.

Dan's Janitorial Service, Inc. (Dan's) protests the rejection of its bids under three solicitations, GS-07B-21085/7XB, GS-07B-21133/7XB, and GS-07B-21151/7XB, issued by the General Services Administration (GSA). GSA sought janitorial services under each solicitation. Dan's complains that GSA improperly rejected Dan's bids as nonresponsive on the basis that the firm's individual bid bond sureties failed to

disclose all outstanding bond obligations and thus were unacceptable. Dan's also alleges that GSA treated the firm in a biased manner.

We deny the protest.

Dan's submitted the apparent low bid in response to each of the above mentioned solicitations. Each bid was accompanied by a bid bond executed by the required two individual sureties. A total of four individual sureties executed the bonds for Dan's under the three solicitations.

Soon after bid opening under each solicitation, the contracting officer discovered, upon checking with other GSA regional offices, that three of the four sureties failed to disclose all other bonds on which they were sureties at the time they executed the bonds for Dan's. This disclosure was required by Item 10 of the Affidavit of Individual Surety, Standard Form 28, two of which accompanied each bond. One surety, who signed two bonds for Dan's on November 20, 1981, placed the word "none" under Item 10 on both of her affidavits. The contracting officer believed that this surety should have listed one of the November 20 obligations on at least one affidavit and considered this omission as a nondisclosure on both affidavits. In addition, the contracting officer determined that this surety failed to disclose one other bond obligation that the contracting officer believed to be outstanding on November 20. Another surety, who was also a signatory on two of Dan's bid bonds, listed other bond obligations on his affidavits but failed to disclose the existence of six bonds in one case and two bonds in the other. A third surety omitted two bond obligations from those he listed.

The contracting officer found that the fourth surety failed to disclose outstanding bond obligations under another GSA solicitation. Based on these nondisclosures, the contracting officer found Dan's sureties to be unacceptable and rejected Dan's bids as non-responsive.

GSA contends that a surety's veracity is a factor that a contracting officer should be able to weigh in determining a surety's acceptability. Dan's sureties falsified their affidavits, GSA asserts, and these circumstances compelled the rejection of those sureties. GSA points out that this falsification could constitute

a basis for prosecution under section 1001 of Title 18 of the United States Code.

Dan's challenges the reasonableness of the contracting officer's rejection of the firm's sureties. First, Dan's asserts that some of the undisclosed bond obligations were not outstanding at the time Dan's sureties signed their affidavits. Some undisclosed bonds were no longer obligations, Dan's states, because GSA had already awarded contracts in those procurements to bidders not indemnified by Dan's sureties, thus canceling Dan's sureties' obligations under those solicitations. Two other bonds, Dan's continues, were not outstanding because one had been rejected and the other superseded by an amended bond. In addition, Dan's believes that it was inappropriate to designate certain bonds, such as those accompanying bids not yet submitted or opened and those issued by an individual surety to several bidders under the same solicitation, as outstanding because the likelihood of their becoming actual liabilities was unpredictable or remote. Finally, Dan's argues that it was improper for the contracting officer to reject one surety here for his nondisclosures on an affidavit concerning an unrelated GSA solicitation.

We believe that, under appropriate circumstances, GSA may consider an individual surety's failure to disclose outstanding bond obligations on his affidavit as a factor in determining an individual surety's acceptability. The purpose of the bid guarantee requirement is to protect the Government's financial interests in the event the bidder fails to execute the required contract documents and deliver the required performance and payment bonds. See 52 Comp. Gen. 223 (1972). To achieve that purpose, it is reasonable for the Government to require that both individual sureties on a bond have a net worth at least equal to their total potential bond liabilities, since the amount of those potential liabilities may have a bearing on the financial soundness of each surety, regardless of the actual financial risk involved. See Clear Thru Maintenance, B-203608, June 15, 1982, 61 Comp. Gen. ___, 82-1 CPD 501. Thus, a surety must disclose all other bond obligations under Item 10 of the affidavit, regardless of the actual risk of liability on those obligations, to enable a contracting officer to make informed determinations concerning a surety's financial soundness.

The duty of the individual surety to disclose all bond obligations, without exception, is clear. Item 10 of the affidavit provides space for the surety to list "all other bonds on which [he is] surety." The affidavit also states that, by signing that document, the surety affirms that the "* * * information * * * furnished is true and complete to the best of [the surety's] knowledge." In view of the clarity of the disclosure requirement, then, a surety's failure to comply is an appropriate factor to consider when determining the acceptability of a surety.

We conclude that GSA had a reasonable basis to reject Dan's sureties as unacceptable for their nondisclosures. The record indicates a continuing pattern of nondisclosure among Dan's sureties. The undisclosed obligations that the contracting officer was able to discover were only those outstanding in other GSA regional offices, leaving unanswered the question of what additional obligations might have been outstanding elsewhere. GSA indicates the possibility of criminal prosecution of these sureties. Under these circumstances, we will not object to GSA's actions.

Dan's believes that many of its sureties' undisclosed bond obligations were not outstanding. In this regard, Dan's contends that GSA had awarded certain contracts by the time the affidavits were signed, thus canceling several of the outstanding bonds that the contracting officer determined were undisclosed. GSA specifically disputes this contention. Since the only evidence on this issue is the conflicting statements of Dan's and GSA, Dan's has not met its burden of affirmatively proving its case. See United Inter-Mountain Telephone Company, B-197471.2, August 14, 1981, 81-2 CPD 140.

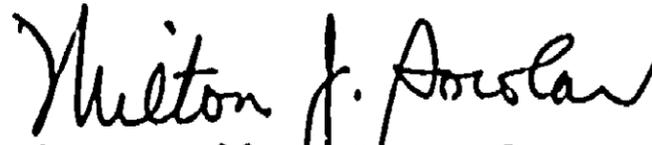
Dan's also challenges the accuracy of the contracting officer's determinations concerning two bonds that Dan's asserts were no longer outstanding because they had been rejected or superseded. We need not consider this challenge, however, since there were sufficient other undisclosed obligations to support the contracting officer's determinations for at least one of Dan's sureties under each solicitation.

We have recently held that the question of the acceptability of an individual surety is one of bidder

responsibility. See Clear Thru Maintenance, supra. Thus, the contracting officer here erred in rejecting Dan's bids as nonresponsive. Under the circumstances, however, rejection on responsibility grounds clearly was appropriate.

Dan's alleges that the contracting officer's rejections of its sureties amounts to bias against the firm itself. Since we have determined, however, that the contracting officer's actions in finding Dan's sureties unacceptable were reasonable, there is no independent evidence of bias here. Absent that evidence, Dan's charge is mere speculation and falls short of satisfying the requirement that the protester affirmatively prove its case. See DATA CONTROLS/North, Inc., B-204812.3, February 17, 1982, 82-1 CPD 139.

The protest is denied.



Acting Comptroller General
of the United States