

DECISION



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

April 24, 1984

FILE: B-213313

DATE:

MATTER OF: D.J. Barclay & Company

DIGEST:

Allegation that finding of surety unacceptability was made in bad faith is without merit where record discloses reasonable basis for agency determination that individual surety did not possess sufficient assets.

D.J. Barclay & Company (D.J. Barclay) protests the rejection of its bid under invitation for bids (IFB) No. N62467-82-C-2510 issued by the Department of the Army for the rehabilitation of building 583, at the Naval Air Station, Jacksonville, Florida. D.J. Barclay's bid was rejected because the Navy determined that one of the individual sureties on its bid bond did not have a sufficient net worth in view of that surety's outstanding obligations on other bonds. D.J. Barclay argues that the Navy's inquiry into the surety's net worth was arbitrary and in bad faith.

We deny the protest.

D.J. Barclay's total bid price was \$329,710 and a bid bond in the amount of \$65,942 was required. D.J. Barclay submitted the bond as an individual surety. The individual surety's affidavit (standard form (SF) 28) listed the net fair market value of all assets as \$1,777,430. Additional information was requested and that figure was subsequently adjusted by the surety to \$1,589,883. The Navy also discovered that the surety failed to disclose his suretyship on two other contracts and that other information indicated that the surety failed to list outstanding obligations on other affidavits as well. The Navy argues that this evidences a pattern of nondisclosure and is in itself sufficient to justify the Navy's actions.

However, the Navy also argues that the record supports the Navy's determination that the surety's assets were insufficient. The amount of outstanding bond obligations was \$1,466,069.40 and the Navy deducted this entire amount from the surety's net worth. Also, the Navy found that

\$689,350 of the property included by the surety on the SF 28 had apparently been assigned as collateral for a performance and/or payment bond on another contract and that payments were substantially in arrears on this contract. Accordingly, since the potential liabilities exceeded the surety's assets, the Navy contends that its determination was proper.

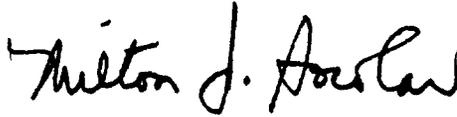
D.J. Barclay argues that the surety did not engage in a pattern of nondisclosure, but rather came forward with all the information requested. With respect to the outstanding bond obligations, D.J. Barclay contends that the Navy's deduction of the total amount was improper since a substantial portion of the bonded work was complete. Also, D.J. Barclay has submitted a letter indicating that the individual to whom the property was assigned as collateral is not acting as a surety for D.J. Barclay and, as a consequence, all the realty listed on the SF 28 should have been considered. D.J. Barclay contends its net worth as an individual surety was adequate and that its bid should not have been rejected.

D.J. Barclay alleges bad faith on the part of procuring officials. Our review, however, discloses nothing to support such an allegation. Although D.J. Barclay disagrees with the Navy's decision to reduce the surety's net worth by the total amount of the surety's obligations, the Navy is not required to consider a surety's other bonds in any specific manner and we have no legal basis to object to the method employed here. We note that Defense Acquisition Regulation § 10-201.2 (Defense Acquisition Circular No. 76-31, October 30, 1981) specifically permits the contracting officer to deduct the total of the surety's other bonding obligations from its net worth. See also Clear Thur Maintenance, Inc., 61 Comp. Gen. 456 (1982) 82-1 CPD 581; Dan's Janitorial Service, Inc., supra. Furthermore, we do not find that the Navy abused its discretion in excluding from the computation of the surety's net worth certain parcels of property. The Navy had the executed assignment of such property in its possession and we cannot find that the Navy's determination to exclude this property from the surety's net worth was unreasonable.

Accordingly, we find that there is no evidence that the Navy acted in bad faith in evaluating the net assets of the individual surety and in determining that the surety

was unacceptable. Based on our finding above, we need not address whether the surety has engaged in a pattern of nondisclosure as argued by the Navy and whether the Navy would have been justified in rejecting the surety on that basis alone.

The protest is denied.

A handwritten signature in cursive script that reads "Milton J. Auster".

Acting Comptroller General
of the United States