

**DECISION**

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

**FILE:** R-216978

**DATE:** February 25, 1985

**MATTER OF:** Norse Construction, Inc.

**DIGEST:**

1. Responsibility of a surety may be established any time before award.
2. Net worth of individual sureties on a bid bond need only be in the amount of the difference between the price stated in the bid and the price stated in the next higher acceptable bid notwithstanding the invitation for bids' requirement for a bid bond that was 20 percent of the bid price.
3. Although determination of nonresponsibility was based on a not totally proper computation of surety's outstanding obligations, where discrepancy was minor and would not have led to different conclusion if corrected, GAO will not question determination.
4. Contracting officer has discretion to decide how much weight to accord surety's outstanding bond obligations in determining acceptability.
5. Failure to complete item 10 in affidavit of individual surety, which required the surety to disclose all other bond obligations, may be considered in determining the acceptability of the surety.

Norse Construction, Inc. (Norse) protests a determination that it is nonresponsible under invitation for bids (IFB) F45603-84-B-0054 issued by McChord Air Force Base, Washington (Air Force), for the refurbishing of military housing units.

The protest is denied.

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The IFB required a bid bond that was 20 percent of the bid price. Norse submitted the low bid in the amount of \$154,945 and a \$30,989 bid bond. Because Norse was bonded by two individual sureties rather than a corporate surety, a completed affidavit of individual surety (Standard Form (SF) 28) for each individual surety was required to accompany the bond.

On their SF 28's, the individual sureties, both officers of Norse, showed net worths that were sufficient to satisfy the requirements of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.202-2(a) (1984), which requires that "the net worth of each individual must equal or exceed the penal amount of the bond." Both sureties left blank block 10 of the SF 28, which required information on all other bonds on which each was acting as a surety.

During a preaward survey, the Air Force learned that the two sureties were also acting as individual sureties on other bonds totaling \$94,902 and had pledged the same assets on those bonds. The Air Force found that the total bond obligations of each of the two individual sureties totaled \$125,891 (\$94,902 plus \$30,989), and that this amount was likely to increase because Norse was the second low bidder on another solicitation in which the low bidder was being rejected.

The SF-28's showed that one of the sureties had a net worth of \$69,300, which the contracting officer determined was insufficient to cover his total bonding obligations. Norse was therefore found to be nonresponsible and the contract was awarded to Roger Lincoln Construction Company, the next low bidder.

In an attempt to cure the nonresponsibility determination, Norse submitted a \$31,000 certified check and a revised SF 28. The contracting officer rejected both and denied Norse's protest against the award on the basis that acceptance of Norse's cashier's check would, in essence, give Norse a "second bite of the apple" and because the sureties' outstanding liabilities on bid and payment and performance bonds was more than \$125,000, which still exceeded the revised net worth of the nonresponsible surety.

The protester maintains that the surety has a net worth that exceeds the amount of the bond and that the SF

28 was therefore sufficient. Norse also contends that the purpose of the certified check was not to provide a substitute surety, but to establish its surety as responsible. Norse also asserts that the Air Force should have considered all of this information in making its responsibility determination because the responsibility of a surety can be established any time prior to contract award.

The protester correctly states that the responsibility of the surety may be established any time before award. Mercury Consolidated, Inc., B-212077.2, Aug. 17, 1984, 84-2 C.P.D. ¶ 186. The Air Force therefore should have considered Norse's revised SF 28 and the check in assessing Norse's responsibility. We are not persuaded, however, that the result would have been different had the Air Force done so.

We have recognized that the contracting officer has the discretion to determine whether the extent to which an individual surety's bonding obligations on other procurements are to be considered in making a responsibility determination. Jet Services, Inc., B-180554, June 6, 1974, 74-1 C.P.D. ¶ 307. We note, however, that the Air Force also used the full value of the bid bond on this procurement in its computations, apparently without considering that the bond need only be in the amount of the difference between the price stated in the bid and the amount of the next higher bid--here, \$7,255. American Construction, B-213199, July 24, 1984, 84-2 C.P.D. ¶ 95; 48 C.F.R. § 28.101-4(b). That amount, added to the surety's outstanding liabilities on other procurements, totaled \$45 more than the surety's net worth, as shown on Norse's revised SF 28, and Norse was in line for the award of another contract which would further increase Norse's potential liability. Also, the assets represented by the check were borrowed and were, therefore, offset by an added equal liability. In these circumstances, we find nothing which persuades us that the contracting officer might have reached a different conclusion had these factors been considered.

Moreover, in Dan's Janitorial Services, Inc., B-205823, et al., Sept. 9, 1982, 82-2 C.P.D. ¶ 217, we stated that a surety is required to disclose all other bond obligations under item 10 of the affidavit, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed judgment concerning the surety's financial soundness and held that a surety's failure to comply with this

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requirement for disclosure is an appropriate factor to consider when determining the acceptability of a surety.

In sum, although the contracting officer's determination of nonresponsibility was not based on a completely proper computation, we believe that the discrepancy was minor and did not materially affect his decision. In these circumstances, we find no basis to question this determination.

The protest is denied.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
General Counsel