Baskin

The Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Juniper Construction Co., Inc.

**File:** B-232542

**Date:** December 5, 1988

## DIGEST

1. Bid bond is not defective even though the individual sureties did not sign the same bond form, since both sureties signed separate bid bonds and executed the required affidavits.

2. A bid cannot be rejected as nonresponsive on the basis that individual sureties' affidavits which accompanied the bid bond were defective because the affidavits serve only to assist the contracting officer in determining the responsibility of the sureties.

## DECISION

Juniper Construction Co., Inc., protests the possible award of a contract to the Hirt Company under invitation for bids (IFB) No. GS-11P88MQD0198 issued by the General Services Administration (GSA) for an indefinite quantity construction contract.

We deny the protest.

The IFB required each bidder to submit a bid bond (standard form (SF) 24) in the amount of 20 percent of the maximum order quantity. Juniper argues that Hirt's apparent low bid is nonresponsive, that Hirt is a nonresponsible bidder, and that its bid must therefore be rejected. Juniper claims that Hirt submitted two bid bonds, each of which was signed by one individual surety, in violation of Federal Acquisition Regulation (FAR) § 28.202-2(a) and the SF 24 instructions which require at least two persons to execute the bond if individual sureties are involved. Juniper argues that Hirt's bid is nonresponsive because only one person executed each of the two bonds rather than two individual sureties executing a single bid bond.

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In its report, GSA cites Ulysses Painting Co.; TransWorld Maintenance, Inc., B-220630, B-220612, Dec. 26, 1985, 85-2 CPD ¶ 719, in support of its position. In that case, under the same facts, we held that the purpose of the bid bond is to secure the liability of the surety to the government if the bidder fails to fulfill its obligations under the bond, and that purpose is met despite the submission of separate bond forms since by signing the bond forms as individuals, each surety assumed liability for the entire amount of the bond.

The sufficiency of an SF 24 depends on whether a surety is clearly bound by its terms. OV Campbell and Sons Industries, Inc., B-229555, Mar. 14, 1988, 88-1 CPD ¶ 259. We believe that the principle in the Ulysses case still holds since the purpose of the bid bond is met whether each surety signs the same bond or separate ones. Accordingly, GSA properly found Hirt's bid to be responsive.

Because Hirt was bonded by individual sureties, Hirt was required to submit an Affidavit of Individual Surety (SF 28) for each of the two required sureties. See FAR § 28.202-2. Juniper alleges that Hirt's bid is nonresponsive because of several defects in the SF 28s submitted by Hirt. Juniper claims that it is impossible to determine from the affidavits whether the net worth of the sureties is sufficient to cover this bond as well as other bonds or contracts on which the individual is acting as surety, and that item 8 regarding real estate owned by the sureties was not completed.

The net worth of sureties on a bid bond does not involve a matter of a bid's responsiveness, but involves a matter of responsibility which may be established at anytime before award. A bid cannot be rejected as nonresponsive on the basis that the individual sureties' net worths are insufficient. The SF 28 serves only to assist the contracting officer in determining the responsibility of the surety and does not affect the responsiveness of the bid. T&A Painting, Inc., B-224222, Jan. 23, 1987, 66 Comp. Gen. ____, 87-1 CPD ¶ 86.

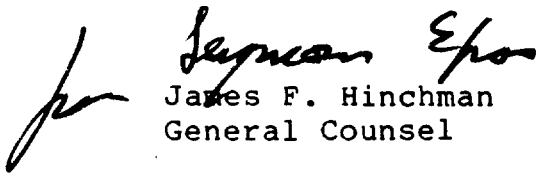
The record shows that the contracting officer made an in-depth investigation of the financial acceptability of Hirt's sureties, repeatedly requesting information about the sureties until all doubts about their financial positions were resolved. Thus, the contracting officer fulfilled his

obligation to investigate individual sureties as set out at FAR § 28.202-2, which requires the contracting officer to "determine the acceptability of individuals proposed as sureties."

The contracting officer is vested with a wide degree of discretion and business judgment in making this determination. Our Office will defer to this judgment unless the protester, who bears the burden of proving his case, shows that there was bad faith by the procuring agency or that a definitive responsibility criteria was not met. Transcontinental Enterprises, Inc., B-225802, July 1, 1987, 66 Comp. Gen. ____, 87-2 CPD ¶ 3. Neither exception has been raised here.

Finally, Juniper alleged that Hirt may be financially unable to perform the contract and requested that an in-depth financial review be conducted before the contracting officer make any affirmative responsibility determination. GSA reports that it performed a financial preaward survey of Hirt and as a result found Hirt financially responsible. As Juniper did not rebut the agency's response in its comments on the agency's report, we consider this protest issue abandoned and will not consider it further. Suddath Moving Systems, Inc., B-229992, Apr. 1, 1988, 88-1 CPD ¶ 332.

The protest is denied.



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