



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carson & Smith Constructors, Inc.
File: B-232537
Date: December 5, 1988

DIGEST

Contracting activity reasonably determined that individual sureties on a bid bond were nonresponsible where both sureties failed to disclose an outstanding bid bond obligation and engaged in business practices which reasonably called into question their integrity and the credibility of their representations regarding their financial resources.

DECISION

Carson & Smith Constructors, Inc. (CSC), protests the rejection of its bid under invitation for bids (IFB) No. DACA03-88-B-0010, issued by the United States Army Corps of Engineers, Little Rock District, for construction of the Consolidated Mission Operation Facility, Blytheville Air Force Base, Arkansas. The Corps rejected CSC's bid because both of the individual sureties on its bid bond failed to disclose all outstanding bond obligations, and had engaged in business practices which called into question their integrity.

The IFB required bidders to submit with their bids a bid guarantee (Standard Form 24) equal to 20 percent of the bid or \$3 million, whichever was less. Since CSC was bonded by individual sureties, it was required to submit a completed Affidavit of Individual Surety (Standard Form 28) on each surety. Item 10 of the affidavit requires individual sureties to disclose all other bids on which they were obligated at the time they executed the bid bond.

At bid opening on August 2, 1988, CSC was the low bidder. The Corps investigated the acceptability of the individuals proposed by CSC as sureties and discovered that both individual sureties had failed to list all of their

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outstanding obligations in Item 10 of the SF 28.1/ The Corps also reports that the results of its investigation revealed that one surety in his capacity as accountant for Charter Marine Savings & Trust had misrepresented to the Corps on June 21, 1988, that the book value of Charter Marine, as of its most recent statement, was over \$116,000,000 when, in fact, Charter Marine's last corporate balance sheet filed with the Texas State Banking Commission for the year ending December 31, 1987, showed a negative book value, listing assets of only \$61,752 and liabilities of \$640,470. The other individual surety is the vice president of United Bankcorp International, which is currently under investigation by the Army Criminal Investigation Division (CID). In addition, both sureties' certificates of sufficiency were signed by an individual who is currently under investigation by the Army CID for procurement fraud.

As a result of this information, the contracting officer determined that there was sufficient doubt regarding both individual sureties' integrity and financial acceptability and therefore determined that they were nonresponsible. Accordingly, CSC's bid was rejected by letter dated August 29, 1988, and award was made to J.V. Smith, the next low bidder.

1/ Both sureties had failed to list their obligations on a bid bond under solicitation No. DACW38-88-B-0088, on which they remained obligated through August 14, 1988. In addition, both sureties were obligated as individual sureties on a bid bond under solicitation No. DACW03-88-R-0008. While the surety affidavits on this latter bond are dated July 11 and July 25, respectively for both sureties, the bond was not actually executed until July 28, and the protester argues that this was not an outstanding obligation on July 26, the date on which the bond under the instant solicitation was executed. The Corps contends that the bond dated July 28 was actually submitted prior to the bond on the current solicitation. In our view, the sureties could not have been obligated to "disclose" the July 28 obligation since it was not in existence on July 26, the date the bond for the current solicitation was actually executed. However, it is clear that both sureties improperly failed to disclose their bid bond obligations under solicitation No. DACW38-88-B-0088.

The question of the financial acceptability of a surety is a matter of responsibility which may be established at any time before the contract award. Contract Services Co., Inc., B-226780.3, Sept. 17, 1987, 87-2 CPD ¶ 263. In making a determination regarding responsibility, the contracting officer is vested with a wide degree of discretion and business judgment and this Office will defer to the contracting officer's decision unless the protester shows that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. Excavators, Inc., B-232066, Nov. 1, 1988, 88-2 CPD ¶ ____.

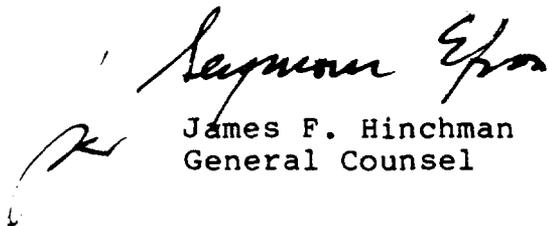
A surety must disclose all outstanding bond obligations, regardless of the actual risk of liability on these obligations, to enable the contracting officer to make an informed determination of the surety's financial soundness. See Satellite Services, Inc., B-220071, Nov. 8, 1985, 85-2 CPD ¶ 532. Since Item 10 of the surety affidavit provides space for the surety to list "all other bonds on which he is a surety," the duty of the individual surety to disclose all such obligations, without exception, is clear. Moreover, while the failure of a surety to disclose fully all outstanding bond obligations does not automatically warrant the rejection of a bidder, it may properly be considered as a factor in the contracting officer's responsibility determination. E.C. Development, Inc., B-231523, Sept. 26, 1988, 88-2 CPD ¶ 285; Excavators, Inc., B-232066, supra.

Here, in addition to the failure of both individual sureties to fully disclose all outstanding bond obligations, the record also shows that there was information which legitimately cast doubt on the integrity of both sureties. We find that this information, which raised a serious question concerning the credibility of both sureties, in conjunction with their failure to disclose all outstanding bond obligations, provided the contracting officer with a reasonable basis to question the accuracy of the sureties' financial representations and, therefore, to make a nonresponsibility determination. See Dunbar & Sullivan Dredging Co., B-232416, Sept. 29, 1988, 88-2 CPD ¶ 301.

CSC also asserts that the Corps' action is tantamount to debarment without due process. Debarment refers to exclusion from government contracting and subcontracting for a reasonable, specified time following notice and a hearing. Mil-Tech Systems, Inc., et al.--Request for Reconsideration, B-212385.4 et al., June 18, 1984, 84-1 CPD ¶ 632. CSC has

not been excluded from contracting with the Corps, or with any other government agency, and the loss of this contract does not constitute de facto debarment. See Broken Lance Enterprises, Inc., B-208932, Sept. 21, 1982, 82-2 CPD ¶ 257.

The protest is denied.



James F. Hinchman
General Counsel