



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C.E. Wylie Construction Company
File: B-234123
Date: April 25, 1989

DIGEST

General Accounting Office will not disturb agency's determination that individual sureties are acceptable where record does not show that determination was made in bad faith; there was no information available to contracting officer prior to award that should have prompted her to undertake independent investigation of sureties, beyond consideration of documentation furnished with bid.

DECISION

C.E. Wylie Construction Company protests the Department of the Navy's award of a contract to Continental Construction Corporation, under invitation for bids (IFB) No. N62474-85-B-5114, for military construction projects. Wylie alleges that Continental's proposed individual sureties are unacceptable, and that Continental thus was not eligible for the award.

We deny the protest.

The IFB required bids to be accompanied by a bid bond in an amount equal to 20 percent of the bid. At the December 20, 1988 bid opening, Continental submitted the low bid of \$8,040,000 and provided a bid bond naming two individual sureties. In accordance with solicitation instructions, Continental provided for each surety a completed Affidavit of Individual Surety (Standard Form 28) listing the surety's assets, liabilities and net worth, and a Certificate of Sufficiency from a bank or trust company officer attesting to the truth of the surety's representations.

On December 21, Wylie, which submitted the second low bid of \$8,227,000, filed an agency-level protest asserting that Continental's individual sureties did not have sufficient net worths to cover the full amount of the bid bond; Wylie

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stated it would provide specific information and documentation supporting these allegations "in the near future." After reviewing Continental's bid bond and the affidavits, however, the contracting officer concluded that the bond was properly executed and that the sureties had adequate resources to cover the penal amount of the bond. When Wylie failed to furnish the promised supporting documentation by December 30, the Navy decided to proceed with award to Continental to assure completion of the projects as soon as possible. Wylie thereafter filed this protest with our Office, along with supporting information not previously provided to the Navy.

Wylie alleges that the sureties are unacceptable, and that Continental therefore is nonresponsible, because the sureties allegedly misrepresented their ownership of real property and their overall net worths in the affidavits accompanying the bond; a clerk signed one surety's Certificate of Sufficiency, but misrepresented herself as a banking officer; and the person who signed the other surety's Certificate of Sufficiency misrepresented herself as president of a trust company in Texas when the company in fact was not authorized to do business as a trust company in Texas.

Wylie contends that the Navy failed to exercise proper business judgment and acted in bad faith in determining the acceptability of the individual sureties without first performing an investigation verifying the truthfulness of the sureties' representations. Wylie argues that the obligation to investigate was especially strong here in view of its preaward protest questioning the acceptability of the sureties and the sureties' failure to provide more than general, undocumented representations concerning their assets. In this regard, Wylie notes that one of the sureties did not provide proof of ownership of his claimed real property, listed only the counties, and not the addresses, where the property is located, and failed to provide financial statements for a corporation he purports to own. Similarly, Wylie notes that the other individual surety failed to list the companies in which his asserted \$2.5 million in stock was held, and did not identify and document the furniture, antiques, and notes receivable listed as assets.

The financial acceptability of an individual surety, including the accuracy of information concerning the surety's financial condition, is a matter of responsibility. Transcontinental Enterprises, Inc., 66 Comp. Gen. 549 (1987), 87-2 CPD ¶ 3. The contracting officer is vested with a wide range of discretion and business judgment in

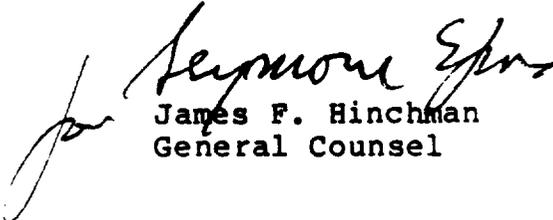
considering responsibility matters, and we will not object to an affirmative determination in this type of case unless the protester shows that procuring officials acted in bad faith.

Here, we find no information available to the contracting officer prior to award that should have prompted her to conduct her own independent investigation into the sureties' acceptability. Although the sureties' description of their assets was somewhat general, there were no apparent inconsistencies in the information, and we think the contracting officer could properly take into account the fact that the sureties' representations were made under oath and that a bank or trust officer had certified that, based on her personal investigation, the representations were true.

While we would agree that information made available to the agency in the course of an agency-level protest could warrant further examination of a surety's acceptability, Wylie presented no verifiable information in its protest, but instead merely alleged generally that the sureties lacked adequate net worths to support the bond and promised further details; Wylie failed to provide any specific information in support of its claim even though the contracting officer waited 9 days for the promised details before proceeding with award. Cf. Eastern Maintenance and Services, Inc., B-229734, Mar. 15, 1988, 88-1 CPD ¶ 266 (agency not required to delay award indefinitely while prospective awardee attempts to cure problem concerning responsibility of surety).

Accordingly, we conclude that it was not unreasonable for the contracting officer to rely on the sureties' representations without conducting her own investigation, and that there is no basis to find that the contracting officer acted in bad faith.

The protest is denied.


James F. Hinchman
General Counsel