

McAuliffe



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kardan Construction, Inc.

File: B-235324

Date: August 10, 1989

DIGEST

Contracting agency reasonably found that bidder was nonresponsible based on a finding that the bidder's individual sureties on its bid bond were unacceptable due to bidder's failure to provide sufficient information for the agency to verify the financial resources of each surety, and also due to an ongoing criminal investigation of the proposed sureties, which reasonably called into question the veracity, credibility and financial acceptability of the sureties.

DECISION

Kardan Construction, Inc., protests the rejection of its apparent low bid under invitation for bids (IFB) No. N62474-89-B-0599, issued by the Navy for the repair and alteration of E.M. Mess Building 368, at the Naval Station, Treasure Island, California. The Navy rejected Kardan's bid because the firm failed to submit sufficient proof of the value of the assets claimed by its individual sureties.

We deny the protest.

The solicitation required each bidder to submit with its bid a bid guarantee equal to 20 percent of the bid or \$3 million, whichever was less. The IFB provided, in accord with Federal Acquisition Regulation (FAR) § 28.202-2 (FAC 84-42), that the guarantees could be satisfied by the submission of bid bonds by two individual sureties, so long as each surety could demonstrate sufficient net worth to cover the penal amounts of the bonds. Kardan submitted a bid bond naming two individual sureties and provided completed Affidavits of Individual Surety (SF 28) setting forth financial information about the sureties.

The SF 28s completed by the sureties indicated net worths of \$33,104,538 for the first surety, Mr. Robert E. Alvarez, and

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\$28,402,317.50 for the second surety, Mr. Robert H. Alvarez. Both sureties listed as their principal assets stock ownership in various companies, along with other smaller assets including automobiles, jewelry and household goods. The Navy reports that while reviewing the sureties' affidavits, the agency obtained information which raised doubts concerning the validity of the affidavits' stated value of the listed securities and the adequacy of the certificates of sufficiency, which apparently were not approved by an officer of an acceptable trust company. Consequently, the contracting officer requested additional information from Kardan concerning the listed securities, including verification of the assets by the submission of certified audit reports and financial statements.

In response to the Navy's request, Kardan submitted photocopies of stock certificates and financial statements described by the certified public accountants (CPAs) who prepared them as limited reviews of financial information submitted by the sureties themselves; the CPAs expressly stated that the reviews were not the equivalent of a certified audit and that the CPAs did not verify the accuracy of the information provided by the sureties. The protester also provided the names of four stockbrokers allegedly familiar with the sureties' listed securities. Kardan assured the Navy that the stockbrokers could provide verification of the worth of the securities.

The Navy reports that when it attempted to contact the first stockbroker that Kardan provided, it was informed that the listed telephone number had been disconnected. One of the stockbrokers apparently confirmed the stated price for one of the listed securities, but then described certain of the identified securities as "risky." The Navy also reports that it contacted the Nevada Corporate Status Office for information about Alliance Capital Corporation, which both sureties listed as their employer, and in which both sureties claimed substantial stock ownership. In this regard, the status office reported that Alliance Capital Corporation's status was delinquent for lack of a required filing. The status office also advised that the corporate status of two of the other concerns listed by the sureties, U.S. Alliance and Geneva Associates, had been revoked. The Navy states that it also learned that the companies listed by the sureties each had been capitalized at \$200,000 or less. In light of the fact that the information provided by Kardan failed to indicate any additional income by these companies, the Navy further questioned the sureties' claims that the stocks of these companies were worth millions of dollars. While attempting to confirm the net worth of the sureties, the Navy also discovered that Nevada state

authorities were in the process of conducting a criminal investigation of the sureties which involved alleged securities fraud.

After reviewing the supplemental information submitted by Kardan, the contracting officer, upon the advice of the Navy legal counsel, concluded that the sureties' net worths were questionable since they remained unverified. The Navy determined that Kardan was nonresponsible based on the sureties' failure to substantiate the claimed value of their assets.

The protester challenges the Navy's determination of the unacceptability of the sureties. Kardan essentially contends that its individual sureties showed net worths that were sufficient to satisfy the requirements of FAR § 28.202-2(a), which requires that "the net worth of each individual must equal or exceed the penal amount of the bond." Kardan argues that it submitted more than adequate evidence detailing both ownership and relative value of the assets held by its sureties.

A bid guarantee is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and performance bonds required under the contract. Its purpose is to secure the surety's liability to the government for excess procurement costs in the event the bidder fails to honor its bid in these respects. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce it. Ware Window Co., et al., B-233367 et al., Feb. 6, 1989, 89-1 CPD ¶ 122. In the case of an individual surety, the question of acceptability is a matter of responsibility; in making the determination, 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 there was no reasonable basis for the determination. Id.

Here, in light of the failure of the sureties to provide sufficient credible evidence of the value of their claimed assets, we think the contracting officer acted reasonably in finding the individual sureties unacceptable and, thus, reasonably determined that Kardan was nonresponsible. The record shows that there was an abundance of information which legitimately cast doubt on and raised serious concern about the integrity, credibility and financial acceptability of the sureties. In particular, while the Navy expressly requested that Kardan establish the worth of the listed securities, Kardan and its sureties provided financial reports of questionable value consisting of a compilation of

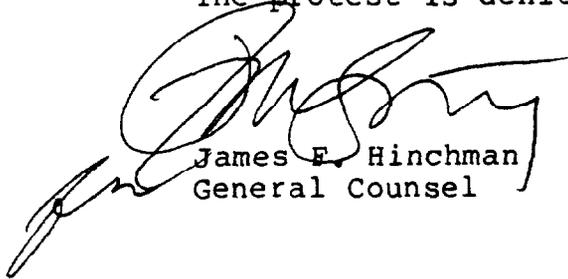
financial information provided by the sureties which the CPAs would not independently verify. We previously have found such financial statements insufficient proof of net worth. See RAM II General Contractor, Inc., B-234613, June 7, 1989, 89-1 CPD ¶ _____. Additionally, the agency's attempts to verify the value of the claimed assets were unsuccessful since reliable price quotations for the securities were unavailable. The record indicates that even the stockbrokers that were named by the sureties, when contacted, could not verify the actual value of the securities. Furthermore, the corporate status of the companies whose stock the sureties allegedly hold remains questionable. The record shows that the companies were not in good standing with the state of incorporation. Without more credible evidence, the Navy reasonably concluded that the sureties overvalued their claimed assets, or at best, that the values of the stocks claimed by the sureties were highly speculative due to limited trading of the stock. Finally, the Navy reports that these sureties are under criminal investigation involving alleged securities fraud.

In our view, the evidence in the record here indicates that the financial net worth of each of Kardan's sureties was not corroborated by credible documentary evidence and the agency was unsuccessful in its repeated attempts to independently verify ownership and value of the claimed assets. If the purported values of the stocks are not considered as assets because there is no credible evidence of their value, neither surety, when outstanding liabilities including current bond obligations are considered, have sufficient assets to support the required bond under this solicitation. In fact, Kardan basically concedes that the other smaller tangible assets are not sufficient. We therefore conclude that the contracting officer, in his discretion, reasonably determined that Kardan's sureties were unacceptable.

Kardan also comments that the Navy previously approved Mr. Robert E. Alvarez, and Mr. Robert H. Alvarez, as sureties since the Navy recently awarded a contract to Kardan where Kardan's bid bond was backed by these same sureties. However, the fact that the same individuals may have been accepted under a different procurement by a different contracting office does not mean the contracting officer in the subject procurement is bound to accept

sureties who have not adequately established proof of ownership and the value of assets claimed in their net worth. See Ram II General Contractor, Inc., B-234613, supra.

The protest is denied.



James F. Hinchman
General Counsel