



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied Production Management Co., Inc.

File: B-236227.2

Date: December 11, 1989

DIGEST

1. Agency properly found protester nonresponsible and rejected its bid where protester failed to provide sufficient information to permit a finding that the individual sureties on its bid bond were acceptable.
2. Replacement of an unacceptable surety after bid opening is not allowable since the liability of the sureties is an element of responsiveness which must be established at the time of bid opening.

DECISION

Allied Production Management Co., Inc. protests the rejection of its bid under invitation for bids (IFB) No. N62474-88-B-3700, issued by the Department of the Navy for improvements to the chlorination facilities at the Marine Corps Air-Ground Combat Center, Twentynine Palms, California. The contracting officer rejected Allied's bid based on his determination that neither of the individual sureties on its bid bond had demonstrated a net worth equal to or exceeding the penal sum of the bond. Allied contends that the documentation that it submitted on behalf of its sureties demonstrated each to be of sufficient net worth; in the alternative, the protester contends that it should be permitted to substitute two acceptable sureties for the ones rejected by the contracting officer.

We deny the protest.

The IFB required each bidder to provide a bid guarantee in an amount equal to 20 percent of its bid price. Both the low bidder, Western Continental Services, Inc., which bid \$415,750, and the second low bidder, Allied, which bid \$435,940, guaranteed their bids with individual sureties. The contracting officer determined that Western

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Continental's individual sureties were nonresponsible and rejected its bid, leaving Allied in line for award.

Allied submitted two bid bonds, each guaranteed by an individual surety, and provided a completed Affidavit of Individual Surety, Standard Form (SF) 28, for each surety. The first surety, Richard Rowan, represented his own net worth at over \$5.9 million; the other surety, Lee Nixt, claimed a net worth of approximately \$834,000. In support of their claimed net worths, both Mr. Rowan and Mr. Nixt supplied financial statements compiled by Certified Public Accountants (CPAs). In both cases, however, the CPAs indicated that the information presented was furnished by the individual surety and had not been independently verified by the CPA.

Mr. Rowan's financial statement listed as assets investments in real estate, stock in several closely held companies, marketable securities, and partnerships; vested interests in profit sharing, individual retirement, and 401K plans; cash (on-hand and in several different bank accounts); notes receivable; a personal residence; and estimated refundable income taxes. Mr. Nixt's statement showed assets including cash, personal property, a personal residence, an interest in the net assets of several businesses, and twelve pieces of real estate, six of which he owned jointly with other parties.

The contracting officer determined that the compiled financial statements did not provide sufficient information for him to be able to conclude that either individual had the net worth claimed. The contracting officer therefore asked Allied to provide additional documentation, including evidence of ownership and value of the real and personal property listed on the SF 28s, a list of all liabilities, and a list of all bonds upon which the individual was then or had been submitted as a proposed surety. The contracting officer also requested that each surety provide an audited personal financial statement based on an audit by a CPA with a reasonable basis for expressing an opinion on whether the statements and documentation were presented fairly and in conformity with generally accepted auditing standards; in the alternative, the sureties were requested to provide their most recent federal income tax returns.

Allied responded by furnishing additional documentation with regard to both sureties. The documentation submitted for Mr. Rowan consisted of another copy of the unaudited personal financial statement previously furnished; an unaudited balance sheet, statement of revenue and expenses, and statement of retained earnings for Rowan Management,

Inc., a closely held corporation in which Mr. Rowan held a 100 percent interest; Mr. Rowan's 1987 federal tax return; 1988 federal tax schedules showing Mr. Rowan's share of the income and deductions for some, but not all, of the companies in which he claimed an interest; and statements dating from December 1988 from three of the four banks identified in his financial statement.

The documentation submitted for Mr. Nixt consisted of grant deeds with accompanying tax statements for 5 of the 12 properties listed in his financial statement. Three of the deeds were Interspousal Transfer Grant Deeds executed by Mr. Nixt's ex-wife within the past year; none of the three showed evidence of recordation. No documentation establishing Mr. Nixt's ownership interests in, or the values of, the proprietorships and corporations listed in his financial statement was submitted.

The contracting officer reviewed the documentation submitted and determined that it did not adequately support the asset valuations claimed by the sureties. He further found that Allied had not provided sufficient information with regard to the sureties' liabilities and current bond obligations. The contracting officer therefore determined that Allied's sureties were unacceptable and rejected its bid.

Allied argues that the documentation that it submitted supports the net worths claimed by its sureties. The protester contends that its sureties should therefore have been accepted and that it should have been awarded the contract. We disagree.

The acceptability of an individual surety is a matter of responsibility and may be established at any time prior to contract award. The contracting officer is vested with a wide degree of discretion and business judgment in making an acceptability determination, and we will defer to the contracting officer's decision unless it lacks a reasonable basis. Farinha Enterprises, Inc., B-235474, Sept. 6, 1989, 68 Comp. Gen. _____, 89-2 CPD ¶ _____. Here, we think that the contracting officer reasonably determined that the evidence submitted by Allied was insufficient to establish the acceptability of its sureties.

First, although both sureties submitted financial statements, neither statement had been audited; thus, in neither case had the CPA who prepared the statement verified the information presented. In addition, Mr. Rowan's accountant indicated that his statement deviated from generally accepted accounting principles regarding estimated income

tax liability associated with listed assets and that the effect of this departure had not been determined.

Allied contends that the Navy should have been willing to accept the unaudited financial statements as proof of the sureties' net worths since, according to the protester, it would be prohibitively expensive for an individual surety to obtain an audit. We do not think that the fact that an audit might be expensive precludes an agency from requiring an audited financial statement for each individual proposed as a surety. When a person decides to engage in the business of being a surety--and it is a business--he should be prepared to provide an independent verification of the net worth claimed. Consolidated Industrial Skills Corp., B-236239.2, Oct. 6, 1989, 89-2 CPD ¶ _____. We therefore think that the contracting officer was justified in refusing to rely on the unaudited financial statements as proof of the sureties' net worths.

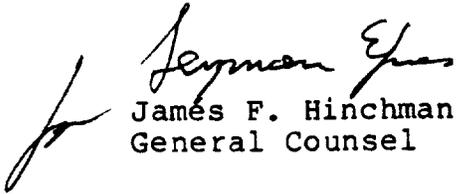
Further, in our view, in neither case was the additional documentation submitted in response to the contracting officer's request sufficient to demonstrate the net worth claimed by the surety. Mr. Rowan submitted no documentation regarding the accounts receivable or real estate that he listed in his financial statement as assets, nor did he submit any documentation regarding the value of several of the businesses in which he claimed an interest. Although he submitted a copy of his federal income tax return for 1987, it was not his most recent one, as requested by the Navy; thus, we think that the contracting officer could reasonably have concluded that the information contained therein was not sufficiently current. In addition, although Mr. Rowan submitted statements from three of the four banks indicated on his financial statement, the statements all dated from December 1988 and were thus approximately 6 months out of date at the time they were submitted; furthermore, statements from two of the accounts reflected balances significantly lower than the balances indicated in the financial statement. Mr. Rowan also failed to furnish an updated list of his current liabilities, without which the contracting officer could not evaluate his net worth.

The only additional documentation submitted on behalf of Mr. Nixt consisted of five grant deeds with accompanying tax statements. No title reports or appraisals indicating fair market value were submitted for any of the parcels, and there was no evidence that three of the five deeds had ever been recorded. Furthermore, like Mr. Rowan, Mr. Nixt failed to furnish an updated list of his liabilities, making it impossible for the contracting officer to calculate his net worth. Thus, in our view, the contracting officer

could reasonably have concluded that neither of Allied's sureties had demonstrated a net worth equal to or exceeding the penal amount of the bond.

With regard to Allied's argument that it should be permitted to substitute two acceptable sureties for the ones rejected by the contracting officer, we note that except in circumstances not applicable here, the replacement of an unacceptable surety after bid opening is not allowable since the liability of the sureties is an element of responsiveness which must be established at the time of bid opening.
Management Servs. Group, Inc., B-234412, May 24, 1989, 89-1 CPD ¶ 499.

The protest is denied.


James F. Hinchman
General Counsel