



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Ignacio Sanchez Construction
File: B-237039
Date: December 20, 1989

DIGEST

In determining the acceptability of an individual bid bond surety, an agency may consider the surety's failure to disclose other bond obligations on the affidavit of individual surety, Standard Form 28, and where the record indicates a continuing pattern by the surety of not disclosing outstanding bond obligations, a contracting officer has a reasonable basis to reject the surety as unacceptable.

DECISION

Ignacio Sanchez Construction protests the rejection of its bid under invitation for bids (IFB) No. N62474-89-B-6079, issued by the Navy for modifications to five buildings at the Marine Corps Air Ground Combat Center, Twentynine Palms, California. Sanchez contends that its low bid was rejected based on an unwarranted finding that the individual sureties on its bid bond were unacceptable.

We deny the protest.

Bids were opened on July 26, 1989. Sanchez submitted the low base bid of \$1,294,000. The IFB required each bidder to submit a bid guarantee equal to 20 percent of its price. Sanchez submitted a bid bond naming two individual sureties. In reviewing the affidavit of individual surety, standard form (SF) 28, submitted by each surety, the agency determined additional information was necessary to ascertain the net worths of the sureties. By letter of August 1, the agency requested substantiating information concerning the ownership and value of the assets claimed. Sanchez submitted additional documentation for both sureties. The agency did not find that the additional information presented adequate evidence to support ownership or value of both sureties' claimed assets. Further, while reviewing the supplemental information the agency discovered that both sureties had failed to list all of their outstanding bid

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bonds in item 10 of their SF 28s submitted under this solicitation. The agency also discovered that each surety had failed on numerous other procurements during 1989 to list all of their outstanding bond obligations. Based on this information, the contracting officer concluded that there was a continuing pattern of failure to disclose outstanding bond obligations, a pattern reflecting negatively on the responsibility of each surety. Therefore, by letter of September 14, Sanchez was informed that its bid was rejected because there was a pattern of nondisclosure by the firm's sureties so that the agency could not assess the extent of their other bonding obligations. The agency also indicated that it could not determine the net worth of the sureties based on the information submitted.

Sanchez protests the propriety of the rejection of its bid. The protester maintains that insufficient effort went into determining the sureties' responsibility and that "a pattern of nondisclosure did not exist at the time of our Bid." The protester essentially points out that except for the obligation under the Department of Veterans Affairs (VA) solicitation No. 501-21-89, none of the obligations listed by the agency as outstanding under prior solicitations is currently outstanding and therefore should have no impact on the bond which is the subject of this protest. The protester further explains that the obligation under the VA contract was not listed by either surety because, according to the protester, the bidder extended the acceptance period of its bid without the sureties' consent and that relieved the sureties of their obligation.

The purpose of a bid guarantee is to secure the liability of a surety to the government in the event that the bidder fails to fulfill its obligation to execute a written contract and to provide payment and performance bonds. The contracting officer is vested with a wide degree of discretion and business judgment in determining surety acceptability and we will, therefore, not object to a finding that a surety is unacceptable unless the protester shows that there was no reasonable basis for the determination or that the agency acted in bad faith. Jerry Eaton, Inc., B-233458, Jan. 24, 1989, 89-1 CPD ¶ 71.

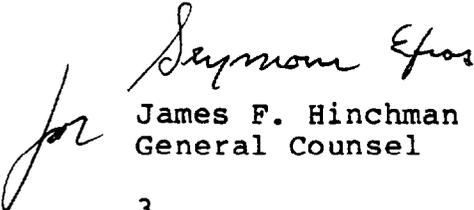
A surety must disclose all outstanding bond obligations, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed determination of the surety's financial soundness. See Satellite Servs., Inc., B-220071, Nov. 8, 1985, 85-2 CPD ¶ 532. Since item 10 of the SF 28 provides space for the surety to list "all other bonds on which he is surety," we believe that the duty of the individual surety to

disclose all such obligations, without exception, is clear. Moreover, a contracting agency may consider the failure of a surety to disclose fully all outstanding bond obligations as a factor in its responsibility determination. Id.

In this case, Sanchez's two sureties failed to list on their SF 28s their bond obligations under VA solicitation No. 501-21-89. While the protester argues that the sureties were not obligated when bids were opened under the subject solicitation because the underlying bid on the VA solicitation was extended without the sureties' permission, there is nothing in the record, nor has the protester submitted anything, which substantiates its position. Further, the protester does not deny that the sureties failed under prior solicitations to disclose all outstanding obligations on their SF 28s. We believe that, regardless of the actual liability that may have remained on any outstanding bonds, the pattern of nondisclosure of the bond obligations of Sanchez's sureties under this solicitation and under prior solicitations provided the contracting officer with a reasonable basis upon which to find the sureties nonresponsible and to reject the Sanchez bid. Jerry Eaton, Inc., B-233458, supra. Moreover, we have carefully reviewed the record and we agree with the agency that the information supplied by the sureties failed to establish clearly the ownership and value of the assets pledged. This provides further justification for the contracting officer's conclusion that the sureties were nonresponsible. See Excavators, Inc., B-232066, Nov. 1, 1988, 88-2 CPD ¶ 421.

Sanchez argues in general that it should have been given an opportunity to provide additional information to correct the defects. While an agency may afford a bidder a reasonable amount of time to correct defects relating to its bid bond, it need not delay award indefinitely in the process. Eastern Maintenance and Servs., Inc., B-229734, Mar. 15, 1988, 88-1 CPD ¶ 266. Here the protester was permitted the opportunity to submit additional information concerning the assets pledged by the sureties. In any event, we do not see how the surety could have corrected or explained the pattern of past nondisclosure had it been given extra time to do so. There is nothing in the protest submission that responds in any material way to the problem.

The protest is denied.


James F. Hinchman
General Counsel