

Mr. Barry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: T&A Painting Inc.

File: B-236846

Date: December 29, 1989

DIGEST

Protester was properly found nonresponsible where it failed to provide sufficient information to permit a finding that the individual sureties on its bid bond were acceptable and the record shows the contracting officer's nonresponsibility determination was reasonably based.

DECISION

T&A Painting Inc., protests the award of a contract to Color Chart Inc., under invitation for bids (IFB) No. N62474-89-B-0562 issued by the Department of the Navy for painting of the interior of hanger number 12 at the Naval Aviation Depot, Alameda, California. T&A contends that its low bid was improperly rejected based on an unwarranted finding that its individual sureties were unacceptable.

We deny the protest.

The solicitation required bidders to provide bid bonds in an amount equal to 20 percent of the bid price and T&A submitted bid bonds executed by two individual sureties. The first individual surety listed on his affidavit of individual surety standard form 28 (SF28) assets which included: (1) an energy lease valued at \$20,504,594; (2) corporate stock valued at \$458,333; (3) current assets valued at \$120,214; (4) marketable securities valued at \$107,165; (5) personal residence valued at \$190,000; and (6) drilling equipment valued at \$175,000, for a total asset value of \$22,430,306. The total liabilities stated were \$5,273,476.

The second individual surety listed as her primary asset the one-half ownership of a closely held corporation, Amistad,

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Inc., which was valued at \$54,295,600. Other assets included on the second surety's SF28 were: (1) an automobile valued at \$1,500; (2) cash in the amount of \$4,100; and (3) a personal residence valued at \$100,000.

After reviewing the two SF28s, the contracting officer determined that additional information was necessary to verify the current value and ownership of the assets listed. By a letter dated July 24, the contracting officer requested specific documentation, including an audited certified public accountant's (CPA) statement that expressed an opinion as to the value of the assets listed, deeds or other evidence of ownership of real property, appraisals for real estate and personal property, and copies of stock certificates. Although T&A submitted additional information regarding its sureties, none of the documents specifically requested was provided. Moreover, some assets listed on the SF28 were not substantiated as the sureties' broker stated that these assets were not pledged, and should, therefore, not be considered.

For each surety, T&A submitted an unaudited CPA's statement which specifically stated that all of the information contained therein was the representation of the surety and that the CPA's review was "substantially less in scope than an examination in accordance with generally accepted auditing standards," and accordingly, the CPA did not express any opinion or verify that the information presented was true and accurate. The information submitted led the contracting officer to question not only the validity of the value of the assets, but also their ownership. For instance, although the first surety's principal asset, the energy lease, was valued at \$20,504,594, this value could not be substantiated from the documents submitted which showed partial assignments of certain "oil and gas leases," as to which there was no evidence that any oil or gas actually was being produced. Although the protester did provide a feasibility report which indicated that the gross value of the energy lease was \$2,280,000, that amount is less than the amount of this surety's outstanding liabilities. Further, it was discovered that one of the individuals who compiled this financial statement was not a licensed CPA in Texas, as he had represented.

The second surety's principal asset was the stock ownership in a closely held corporation whose principal resource was said to be underground water. To substantiate its value, the surety presented the balance sheet of another corporation, Aquila Inc., which was purportedly changed to Amistad, Inc. There was no evidence, however, of a transfer of assets from Aquila to Amistad. Moreover, the assets of

Aquila only out-weighed its liabilities by \$198,000, whereas 50 percent of the stock allegedly was valued at \$54,296,600. Further, as this stock is not readily traded, the agency had no independent means of ascertaining its value and was provided with no evidence thereof.

The questionable value of the above assets was further exacerbated by the Navy's discovery that the sureties' broker had been suspended by the Department of the Army for his involvement with fraudulent sureties. Based upon the bidder's failure to provide substantiating proof of its sureties financial capacities, and on the fact that its sureties' broker had been suspended by the Army for fraud, the contracting officer determined the individual sureties to be unacceptable and rejected T&A's bid. The contract was awarded on August 25, 1989, and T&A was informed by a letter of that date. T&A was later informed of the reasons for its rejection and T&A filed a protest in our Office on September 7.

T&A alleges that the amount of supporting data requested by the contracting officer to prove the net worth and reliability of T&A's proposed sureties was out of proportion to the value of this contract, considering T&A's bid was only \$69,215, and a surety need only to have sufficient net worth to cover 20 percent of that price. T&A further alleges that the true reason for the rejection of its bid was the contracting officials' prejudice against the owner's nationality.^{1/}

We do not find it unreasonable for the contracting officer to have sought substantiating evidence of the proposed sureties' net worth. Contracting officers specifically are obligated by the Federal Acquisition Regulation (FAR) § 28.202-2 (FAC 84-42), to investigate individual sureties to determine their acceptability. The regulation states that "[t]he information provided [in SF28] is helpful in determining the net worth of proposed individual sureties." In making this determination, therefore, the contracting officer is not limited to the consideration of information contained in the SF28 and may go beyond that information

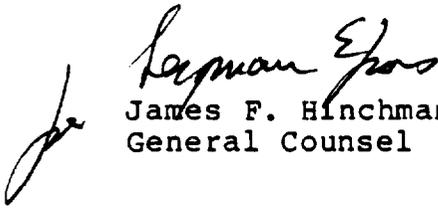
^{1/} In support of its allegation of prejudice the protester requested that it be permitted to submit a tape recorded conversation secretly made during the course of a conference with Navy officials after the protester had been asked to leave the room. Since the government had not given consent to have its private conversation recorded, and due to the general unreliability of this evidence, we did not permit the tape to be included in the record.

where necessary in making his decision. Aceves Constr. and Maintenance, Inc., B-233027, Jan. 4, 1989, 89-1 CPD ¶ 7. In addition, the contracting officer is vested with a wide degree of discretion and business judgment in making this determination. We will defer to this judgment, therefore, unless the protester shows that the decision was without a reasonable basis. Id. In our view, the record here reflects a reasonable basis for the contracting officer's determination.

The record shows that the contracting officer had no credible evidence supporting the alleged net worth of either of the proposed sureties. Despite the agency's specific request for audited personal financial statements or a recent federal tax return with supporting documentation, neither surety complied. The documentation that the sureties did, in fact, provide was submitted with a letter from their broker who had been suspended by the Army for representing fraudulent sureties. We agree with the agency that the totality of the evidence submitted justified the contracting officer's decision to reject T&A's bid. This is especially true in light of the fact that T&A has not rebutted any of the evidence which led to the rejection of its sureties.

T&A also argues that it should have been given the opportunity to submit additional documentation to the agency prior to the rejection of its bid. We have consistently held, however, that an agency is not required to delay award indefinitely while a bidder attempts to cure a problem of responsibility. Eastern Maintenance and Servs., Inc., B-229734, Mar. 15, 1988, 88-1 CPD ¶ 266. Further, despite the protester's allegation that it was not aware of any deficiencies with its sureties, the agency did request additional, specific documentation concerning the sureties' net worth early in the bid evaluation process, which should have put T&A on notice that its sureties' acceptability was open to question.

Since we find that the agency reasonably rejected T&A's bid based on its use of unacceptable sureties, the protest is denied.


James F. Hinchman
General Counsel