



The Comptroller General
of the United States

Washington, D.C. 20548

H. Johnson

Decision

Matter of: Hirt Company
File: B-230864
Date: June 23, 1988

DIGEST

1. Contracting officer's rejection of individual sureties as nonresponsible is reasonable where certificates of sufficiency, contained in each sureties' affidavit of Individual Surety were questionable and all other attempts to verify the statement of assets of each surety were unsuccessful and cast further doubt on the veracity of the sureties.
2. Protester's new and independent ground of protest is dismissed as untimely since it does not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

DECISION

Hirt Company protests the Air Force's rejection of its proposal under request for proposals (RFP) No. F49642-88-RA110 for a construction project requiring the removal of asbestos and the replacement of steam and condensate lines in various aircraft hangars at Andrews Air Force Base, Maryland. Hirt's proposal was rejected due to the contracting officer's determination that Hirt had failed to provide responsible individual sureties for its performance and payment bonds.

We deny the protest in part and dismiss it in part.

The RFP, issued on January 28, 1988, contemplated award of a firm, fixed-price contract and included price as the only evaluation factor for award. Award was to be made to the offeror whose proposal represented the lowest cost to the government. The RFP also required a performance bond of 100 percent of the contract price and a payment bond of varying amounts depending on the ultimate contract price.

Hirt submitted the apparent low proposal. On February 16, Hirt was called to a meeting with the Air Force in order to verify its price since it was considerably below the government estimate and the next low offeror. Hirt verified

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that its price was correct and the Air Force proceeded with contract award to Hirt, on initial proposals without price discussions, by asking Hirt to submit the necessary performance and payment bonds. Hirt, however, experienced difficulty in securing corporate sureties for its bonds. After several weeks, the contracting officer notified Hirt that it had until March 18 to submit the required bonds or no longer be considered for award. The contracting officer states that this deadline was necessary because of the urgency of the project and the potential of slippage in the contract work schedule. Hirt delivered the required bonds on March 18 using two individual sureties it obtained through a broker. The contracting officer then began her attempts to determine the acceptability of the proposed sureties.

Both sureties submitted an Affidavit of Individual Surety (Standard Form 28) and listed the same business address in Wyoming. The first surety indicated a net worth of \$141.5 million on her affidavit; the other indicated a net worth of \$152 million. The first surety listed over \$43 million in outstanding surety obligations, while the second surety listed over \$25 million in outstanding obligations. The certificate of sufficiency contained in each affidavit was signed by the same trust officer with a trust company in Texas. According to the contracting officer, she called the trust officer, at the telephone number listed, and was told by him that he no longer worked for the trust company, that he did not know the sureties, and that he had only signed the certificates of sufficiency at the request of another employee of the trust company.

The contracting officer then tried to contact the sureties themselves but was unsuccessful. The contracting officer reached an answering service at the number listed for the first surety and was told that she was not in and it was not known when she would return. At the number listed for the second surety, the contracting officer reached a business called Tools and Gadgets. The secretary who answered the telephone identified the second surety as the owner of the business and said she thought he was in Las Vegas with the first surety.

The contracting officer then attempted to determine the validity of the documents submitted by each surety which described their assets. The first surety listed her assets as 1,920 acres of land worth \$3.5 million, 1.85 million tons of unmined graphite worth \$115 million, and certificates of deposit worth \$23 million for a total net worth of \$141.5 million. The second surety listed his assets as including an unspecified amount of timber and wood products worth \$2.5 million, 16,750 tons of unmined antimony worth \$125 million

and a certificate of deposit worth \$25 million for a total net worth of \$152.5 million. The unmined mineral deposits listed by both sureties are located in the 1,920 acres of land listed as owned by the first surety. No proof of value of the land was provided other than documents relating to mineral deposits. Both sureties also indicated that the assets they listed represented 100 percent of the stock of two wholly-owned corporations.

In describing her assets, the first surety included an undated letter from an ore engineering firm proposing to survey, sample, assay and prepare reports on mining claims. The subject of the letter was, however, a different mineral deposit than the surety listed as her principal asset. The contracting officer then called the telephone numbers listed in the engineering firm's letter and reached an unrelated private residence and Chim-Chim Cherie, a chimney cleaning business. The first surety also included a bank confirmation form from an "asset management" firm showing a balance of \$6 million in an account owned by the surety. The contracting officer called the number listed for the asset management firm and reached a recording stating that the number was disconnected and was then told by directory assistance that there was no listing for the firm. The contracting officer then called the accountant listed by the surety on the bank confirmation form. The accountant told the contracting officer that he had received similar calls from other contracting officers and that the surety was neither a client of his nor did he ever attest to her financial worth. The accountant added that he was trying to track down the surety himself since she owed him some money. At this point, the contracting officer ended her investigation of this surety.

The first surety also listed three certificates of deposit totalling approximately \$23 million. One \$18 million certificate of deposit was listed as held by a bank apparently located in the Antilles, West Indies. Another \$5 million certificate was listed as held by a bank apparently located in Switzerland. A third certificate of deposit for \$5,000 was listed as held by a California bank. The contracting officer apparently did not attempt to verify these deposits since the surety did not provide any addresses or telephone numbers for the banks.

In describing his assets, the second surety included several letters, dating from 1983 and 1984, from a geological firm to someone other than the surety. The letters do mention the same mineral listed by the surety as an asset, but make no connection between the surety and the person to whom the letters were addressed. The contracting officer called the telephone numbers listed on the geological firm's letterhead

and reached another unrelated private residence and was told that many similar calls had been made to the number in the past seeking the firm, but that no such firm could be reached at that number. The second surety also listed a certificate of deposit of \$25 million held by the same asset management firm in which the first surety stated she had on deposit \$6 million. As noted above, the contracting officer's attempts to contact and verify the existence of the asset management firm were unsuccessful.

On March 24, after a week of fruitless attempts to determine the acceptability of the individual sureties, the contracting officer rejected the sureties as nonresponsible. Hirt filed its protest in our Office on March 28 complaining of the contracting officer's "selective, and seemingly arbitrary enforcement" of the regulations concerning acceptance of individual sureties. Hirt argues that the contracting officer did not adequately verify the assets listed by the sureties. Hirt adds that neither it nor its surety broker was contacted prior to the contracting officer's rejection of the sureties. Hirt also alleges that the contracting officer had indicated her dislike of the use of any individual surety. Hirt appears to imply that the contracting officer was biased against the use of individual sureties.

The adequacy of a surety's net worth is a matter of responsibility which may be established anytime before contract award. Clear Thru Maint., Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581. Since such a determination involves the exercise of subjective business judgments we will not disturb it unless it is shown to be unreasonable. See T&A Painting, Inc., B-224222, Jan. 23, 1987, 87-1 CPD ¶ 86. In this regard, it is the surety's obligation to provide the contracting officer with sufficient information to clearly establish its responsibility; that is, that it has sufficient financial resources to meet its bond obligations. See Manufacturing Systems International, B-212173, May 30 1984, 84-1 CPD ¶ 586.

Although both sureties submitted completed affidavits including a description of their assets and a listing of their outstanding bond obligations, those affidavits were cast in doubt when the contracting officer was told by the trust officer who signed the certificates of sufficiency accompanying the affidavits that he in fact did not know the sureties and, apparently, never intended to attest to their financial capacity or responsibility. Extensive attempts by the contracting officer to verify the statement of assets

listed by the sureties were unsuccessful and cast further doubt on the responsibility of the sureties. We, thus, find that the contracting officer's rejection of the sureties as nonresponsible was reasonable.

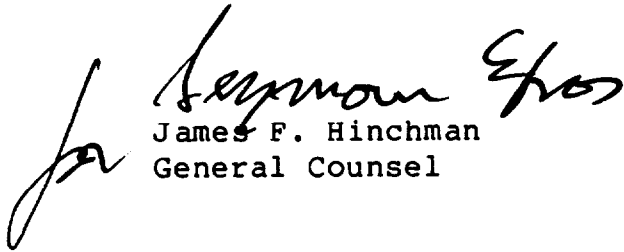
Although the contracting officer could have contacted Hirt, or Hirt's surety broker, in attempting to verify the assets of the sureties, we find no legal requirement for the contracting officer to have done so since rejection of a surety in no way "brands" the offeror itself as such determinations are based exclusively on the qualifications of the surety. See, e.g., Clear Thru Maint., Inc., supra, 61 Comp. Gen. at 461, 82-1 CPD ¶ 581 at 9. Nor do we see how contacting Hirt or its surety broker would have helped remove the doubt surrounding the veracity of the sureties' statements of assets. We note, in this regard, that even after being provided with the contracting officer's report detailing her efforts to determine the acceptability of the individual sureties, Hirt has submitted no information whatsoever which would indicate that any of the advice the contracting officer received was erroneous. We also find Hirt's allegation of bias on the part of the contracting officer towards individual sureties as a whole to be unsubstantiated.

In its comments on the agency report, Hirt argues, for the first time, that the March 18 deadline did not allow it enough time to find acceptable sureties since it should have been given until April 10, the date Hirt alleges should have been the deadline for contract award. This argument, however, is untimely and not for consideration on the merits. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1988). Where a protester initially files a timely protest, and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. P-B Eng., Co., B-220739, Jan. 25, 1988, 88-1 CPD ¶ 71. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Little Susitna Co., 65 Comp. Gen. 651 (1986), 86-1 CPD ¶ 560.

Hirt was notified on March 24 of the rejection of its individual sureties. Its comments on the agency report, in which it raises the new argument, were filed in our Office on May 27, clearly outside the 10-day time period. Hirt also submits a new corporate surety, apparently secured on May 20, in an attempt to cure the nonresponsibility of the

initial individual sureties. Although acceptability of an individual surety, as a matter of responsibility, ordinarily may be established, time permitting, any time prior to award, replacement of an unacceptable surety after closing date for receipt of proposals would not be an allowable means for achieving this end here because award was to be made on initial proposals without discussions and offerors were not given a chance to correct any deficiencies in their proposals. See, e.g., Clear Thru Maint., Inc., supra, 61 Comp. Gen. at 460, 82-1 CPD ¶ 581 at 7. Further, the new corporate surety apparently was not even secured within the time period that Hirt now complains it should have been afforded.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel