



Washington, D.C. 20548

## Decision

Matter of: Site Preparation Contractors, Inc.

File: B-232105

Date: September 20, 1988

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### DIGEST

Contracting agency's determination that a bidder is nonresponsible is reasonable where bidder's individual sureties failed to disclose outstanding bond obligations and demonstrated a pattern of nondisclosure of such outstanding bond obligations.

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### DECISION

Site Preparation Contractors, Inc. protests the determination that it was nonresponsible under invitation for bids (IFB) No. DACW45-88-B-0041, issued by the Army Corps of Engineers, Omaha District, for environmental clean-up work at the Charles George Landfill in Tyngsborough, Massachusetts. The Corps determined that Site Preparation was nonresponsible based upon the nondisclosure of outstanding bond obligations by its sureties and upon the demonstrated pattern of such nondisclosure.

We deny the protest.

The IFB, issued on February 16, 1988, required bidders to submit bid bonds equal to 20 percent of their bid prices. Since Site Preparation was bonded by individual sureties (as opposed to corporate sureties), it was required to submit a completed Affidavit of Individual Surety (Standard Form (SF) 28) for each surety. Item 10 of the SF 28 requires that the signatory disclose "all other bonds on which I am a surety."

Bid opening was held on May 17. Site Preparation was the apparent low bidder. Two sureties, Edward Alexander and James Alexander, had signed Site Preparation's bid bond and each had executed the required SF 28 on April 12, 1988. In executing Item 10, James Alexander inserted the word "none," indicating that he had no other outstanding bond obligations; Edward Alexander stated in Item 10 of the

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SF 28 that he had only one obligation, a payment and performance bond at Shaw Air Force Base in South Carolina.

The Corps subsequently discovered, however, that James Alexander was an individual surety on bid bonds submitted under IFB Nos. DACW31-88-B-0215 (0215) and DACW51-88-B-0217 (0217), issued by the Corps' Baltimore District. James signed the SF 28 for 0215 on March 23, and he signed the SF 28 for 0217 on April 12, the same day he signed the SF 28 for the IFB which is being protested. Contracts under IFB Nos. 0215 and 0217 were not awarded until June 16.

Edward Alexander also was found by the Corps to have failed to disclose current bond obligations. On March 15, he signed an SF 28 obligating himself as an individual surety for a bid bond under another Army Corps of Engineers, Omaha district solicitation, DACW45-88-B-0025, and the bidder, which also was Site Preparation, extended its bid and bid bond on May 17 for 60 days. Moreover, according to the Corps, James and Edward Alexander demonstrated a pattern of nondisclosure of bid bond requirements. Each was also individual surety for bid bonds submitted under DACW31-88-B-0218 (0218) and each executed an SF 28 on April 13 which failed to list 0215, 0217, and the bid bond in the present solicitation.<sup>1/</sup>

Further investigation also revealed that on June 2, both James and Edward Alexander executed an SF 28 in connection with IFB DACW41-88-B-0168. James' affidavit lists a payment and performance bond at Andrews Air Force Base as the only other bond on which he is a surety. Edward lists the Andrews Air Force Base payment and performance bond as well as the payment and performance bond at Shaw Air Force Base as the only other bonds on which he is a surety. Based on all this information, the Corps determined Site Preparation to be nonresponsible and awarded the contract to another firm on July 22.

In reviewing a bidder's responsibility, the contracting officer is vested with a wide range of discretion and business judgment, and this Office will defer to the contracting officer's decision unless the protester shows

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<sup>1/</sup> The record indicates that Edward Alexander prepared an SF 28 for 0218 on April 12 and again on the 13th. In both instances, however, he did not disclose the obligations stated above.

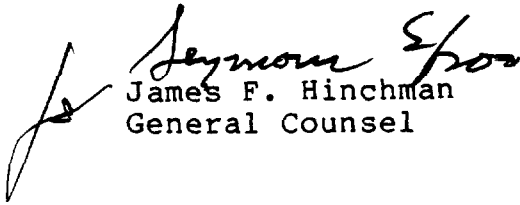
that there was bad faith by the procuring agency or that there was no reasonable basis for the determination. Eastern Metal Products & Fabricators, Inc., B-220549.2 et al., Jan. 8, 1986, 86-1 CPD ¶ 18. Here, in light of the failure of the sureties to disclose obligations in its SF 28 and the clear pattern of nondisclosure apparent from other SF 28s, we think that the contracting officer did not abuse his discretion in determining that Site Preparation was nonresponsible.

Site Preparation argues, however, that the Alexanders' pattern of nondisclosure should be overlooked because of the absence of guidance in the instructions on how to complete the SF 28. It contends that the sureties did not disclose their prior obligations because they were not certain whether they would be liable under any or all of their prior executed obligations. Site Preparation asserts that it was the responsibility of the contracting officer to determine the extent of the sureties outstanding bond obligations. We find this argument to be without merit.

The Affidavit of Individual Surety is a document separate from the bid bond itself and serves solely as an aid in determining the responsibility of an individual surety. River Equipment Co., Inc., B-227066, July 24, 1987, 87-2 CPD ¶ 84. Therefore, a contracting agency may properly consider the failure of an individual surety to disclose outstanding bond obligations as a factor in determining the responsibility of the bidder. Id. A surety must disclose all other bond obligations under Item 10 of the affidavit, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed determination concerning the sureties' financial soundness. The impact of outstanding bond obligations is a decision to be made by the contracting officer, not by the sureties themselves through the selective disclosure of their potential liabilities. Id. Since Item 10 of the affidavit 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. Id. Thus, each of Site Preparation's sureties was obligated to disclose all outstanding bond obligations which existed as of April 12, the date they signed the SF 28. They clearly failed to do

so.<sup>2/</sup> Therefore, we find that the contracting officer acted reasonably in determining that Site Preparation was nonresponsible.

The protest is denied.

  
James F. Hinchman  
General Counsel

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2/ Site Preparation also argues that the Corps failed to provide Site Preparation with notice of the Corps' concerns about its bid bond. The record shows, however, that Site Preparation was orally informed of the deficiencies on June 24 and on July 7 attempted to correct the deficiencies by tendering performance and payment bonds. The Corps did not consider this as the equivalent of a proper bid guarantee, i.e., a bid bond. Further, the "new list" of outstanding bond obligations submitted by Site Preparation in its July 7 letter contained additional instances of nondisclosure.