



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gem Construction Co., Inc.
File: B-232271
Date: November 29, 1988

DIGEST

Procuring agency reasonably determined that individual surety on a bid bond was nonresponsible where agency owned by surety engaged in business practices which called into question the surety's integrity and credibility.

DECISION

Gem Construction Co., Inc., protests the rejection of its low bid under invitation for bids (IFB) No. DACA27-88-B-0038, issued by the Louisville District of the Corps of Engineers for the installation of an Intrusion Detection System. The Corps determined that Gem was nonresponsible because an individual on its bid bond had engaged in unethical business practices which called into question ones integrity and credibility. We deny the protest.

The Corps reports that there has been a growing concern among its Districts regarding individual sureties. The Corps reports that over the past few months the Districts have had numerous bidders use individual sureties to guarantee bid, performance, and payment bonds, and that it has been overwhelmed with a number of deficient and fraudulent guarantees. The Corps reports that in response to this situation, the Judge Advocate General's Office has established a "Bond Team" to monitor the problem, and requires that the contracting officer check with the Bond Team before determining the acceptability of any individual sureties.

The Corps reports that the contracting officer in evaluating the acceptability of Gem's individual sureties discovered that one of the sureties and the notary public were on the "bad list" maintained by the Bond Team, and were being proposed for debarment. The reasons for the proposed action arise from the business practices of MSR Associates, an

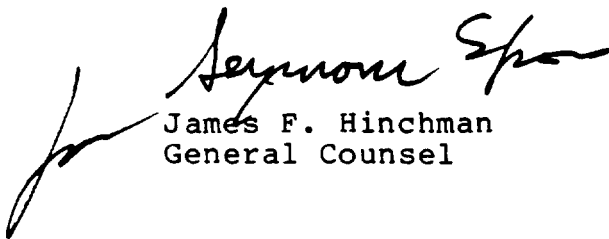
044007/137423

insurance agency owned by the individual surety in question, which also employs the notary public on the bid bond. MSR had provided Universal City Construction Company with six defective bid bonds submitted under Corps solicitations. These bid bonds included forged affidavits, named individuals as sureties who had never agreed to be bound as sureties, and contained improper notarizations and undisclosed bond obligations, among other improprieties. Based upon this information, the procuring agency determined that the surety was unacceptable and rejected Gem as nonresponsible.

The question of the financial acceptability of a surety is a matter of responsibility which may be established at any time before the contract award. Contract Services, Co., B-226780.3, Sept. 17, 1987, 87-2 CPD ¶ 263. In making a determination regarding responsibility, the procuring agency is vested with a wide degree of discretion and business judgment and this Office will defer to the agency's decision unless the protester shows that there was bad faith by the agency or that there was no reasonable basis for the determination. Excavators, Inc., B-232066, Nov. 1, 1988, 88-2 CPD ¶ ____.

Here, the record shows that the Corps had information which legitimately cast doubt on the integrity of one of the individual sureties. We find that this information raised a serious question concerning the credibility of the individual surety. In particular, while the individual may not have been directly responsible for the bid bond irregularities in question, he was the owner of the company which had engaged in a pattern of providing bidders with defective bid bonds. In effect, under this individual's direction, MSR was regularly passing fraudulent bond information as a bond broker. In our view, these business practices provided the procuring agency with a reasonable basis to question the accuracy of the surety's financial representations and, therefore, to make a nonresponsibility determination. See Dunbar & Sullivan Dredging Co., B-232416, Sept. 29, 1988, 88-2 CPD ¶ 301.

The protest is denied.


James F. Hinchman
General Counsel