



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ware Window Company; Saleco-Ware Window Company

File: B-233367; B-233168

Date: February 6, 1989

DIGEST

Where bid bond individual sureties have been proposed for debarment, in one case as a result of convictions for fraud in connection with a government contract, the agency has a reasonable basis for finding the sureties unacceptable and rejecting bidder as nonresponsible.

DECISION

Ware Window Company and Saleco-Ware Window Company protest the rejection of their apparent low bids under invitation for bids (IFB) Nos. F04699-88-B043 and F04699-88-B0028, respectively, issued by the Department of the Air Force for the replacement of dormitory windows at McClellan Air Force Base in California. The protesters object that the agency improperly rejected the firms as nonresponsible due to deficiencies in their proposed individual sureties.

We deny the protests.^{1/}

Both of the IFBs required bid guarantees. The solicitations provided, in accord with Federal Acquisition Regulation (FAR) § 28.202-2, that the guarantees could be satisfied by the submission of bid bonds by two individual sureties, so long as each surety could demonstrate sufficient net worth to cover the penal amounts of the bonds. Both bidders relied upon the same two individuals as sureties in

^{1/} The Air Force initially rejected the bids as nonresponsive for absence of signatures of authorized company officials, but subsequently determined that the firms also were nonresponsible. As this latter issue is dispositive here, we need not consider the responsiveness of the bids.

satisfaction of the bid guarantee requirement and furnished Affidavits of Individual Surety (SF-28) setting forth the financial information for the sureties. On the basis of the affidavits and other information available to it, the Air Force determined that both of the sureties were unacceptable, and accordingly found the bidders nonresponsible.

Specifically, the agency learned that both individuals have been proposed for debarment from federal contracting for violations of federal law in connection with other government contracts, including the submission of falsified payroll records. In addition, one of the sureties has been proposed for debarment on the basis of convictions in federal court for submitting a false, fictitious, or fraudulent claim, and for submitting a false statement. The agency concluded that these matters raised a serious question as to the integrity of the proposed sureties sufficient to render them unacceptable, and that the bidders therefore were not responsible.

The protesters challenge the Air Force's determination, asserting that the sureties have stated that they either had no knowledge of the violations on which the proposed debarments are based, or did not participate directly in an improper conduct that formed the basis of the violations. In any event, they state that the proposed debarments concern the individuals' capacity to compete for government contracts, and should not affect their eligibility to serve as sureties.

A bid guarantee is a firm commitment to assure the government that a successful bidder will execute contractual documents and provide payment and performance bonds required under the contract. Its purpose is to secure the surety's liability to the government for excess procurement costs in the event the bidder fails to honor its bid in these respects. The key question in determining the sufficiency of a bid guarantee is whether the government will be able to enforce it. Imperial Maintenance, Inc., B-224257, Jan. 8, 1987, 87-1 CPD ¶ 34. In the case of an individual surety, the question of acceptability is a matter of responsibility; in making the determination, the contracting officer is vested with a wide degree of discretion and business judgment, and this Office will defer to the contracting officer's decision unless the protester shows there was no reasonable basis for the determination. Carson & Smith Constructors, Inc., B-232537, Dec. 5, 1988, 88-2 CPD ¶ ____.

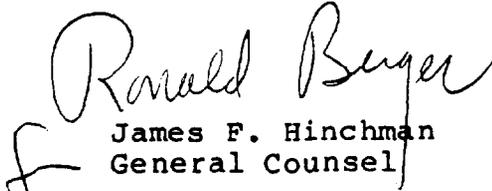
We think the Air Force had a reasonable basis for rejecting the proposed sureties here. Without question, criminal convictions for fraud in connection with a government contract, and proposed debarment for violations of law in connection with other government contracts, bear both on the sureties' integrity and the credibility of their representations in connection with this procurement. Given that the purpose of the bonding requirement is to provide the government with a financial guarantee, we think it is clear that such information, which diminishes the likelihood that this guarantee will be enforceable, may be considered by the agency in determining the sureties' acceptability.

This view is consistent with our holdings in prior decisions. In Carson & Smith Constructors, Inc., B-232537 supra, for example, a proposed surety was an official of a corporation currently under criminal investigation by the federal government, and the certificate of sufficiency of both sureties was signed by an individual who was under investigation by the government for procurement fraud. Although, unlike here, neither surety had been proposed for debarment or indicted for a crime, we found the agency properly had rejected the sureties largely on the basis of the information "legitimately cast doubt on the integrity of both sureties," and raised a serious question concerning their credibility. See also Dunbar & Sullivan Dredging Co B-232416, Sept. 29, 1988, 88-2 CPD ¶ 301 (surety under investigation by state criminal investigating agencies). The fact that the circumstances here involve actual findings, not merely an investigation, presents an even more compelling case for rejection of the sureties.

We find unpersuasive the protesters' argument that the proposed debarments should not be relied upon because the sureties had no knowledge of or direct participation in improper acts. The fact that a federal court was sufficiently convinced of an individual's culpability to convict him, we believe, is reason enough for a contracting officer to conclude that the individual was involved in wrongdoing. Similarly, the protesters' statement that debarment affects only the capacity to contract with the government, not to serve as surety, is irrelevant; the business practices that formed the basis for the proposed debarment go to the issues of integrity, credibility, and the validity of the representations made in the affidavits.

and may properly be considered in determining a surety's acceptability. Carson & Smith Constructors, Inc., B-232537 supra.

The protests are denied.


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