



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Labco Construction, Inc.

File: B-232986, B-232987, B-232988

Date: February 9, 1989

DIGEST

Contracting agency reasonably found that bidder was nonresponsible based on a finding that the bidder's individual sureties on its bid bonds were unacceptable since the contracting agency was unable to verify the financial resources of each surety and doubt was cast on the sureties' net worth.

DECISION

Labco Construction, Inc., protests the rejection of its bids under invitation for bids (IFB) Nos. DACA65-88-B-0046, DACA65-88-B-0048, and DACA65-88-B-0049 issued by the Army Corps of Engineers for general repairs and steam modernization projects. The Corps rejected Labco's bids because the firm failed to establish the financial adequacy of its individual bid bond sureties.

We deny the protests in part and dismiss the protests in part.

Each IFB required that all bids of \$25,000 or greater be accompanied by a bid guarantee equal to 20 percent of the bid price, or \$3 million, whichever was lesser. Labco was the apparent low bidder under each IFB. Labco submitted with its bids standard form (SF) 24 bid bonds listing the same two individual sureties for each of the three projects. The bid bonds were in the amount of 20 percent of Labco's bids and were accompanied by a completed Affidavit of Individual Surety, SF 28^{1/}, for each individual surety as

1/ An SF 28 is a document, separate from the bond itself in which the individual pledges assets, which serves as an aid in determining the responsibility of an individual surety. Coliseum Construction, Inc., B-228597, Feb. 9, 1988, 67 Comp. Gen. ___, 88-1 CPD ¶ 128.

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required by the Federal Acquisition Regulation (FAR) § 28.202-2(b) (1986). Item 10 of the affidavit specifically requires the individual sureties to disclose all other bonds on which they were listed as sureties at the time they execute the bid bonds for the protester.

The SF 28's completed by the sureties indicated net worths of \$47,492,837 for the first surety, Mr. Sam Bass, Jr., and \$36,009,880 for the second surety, Mr. George Bass. The first surety listed assets in Bass Stabilizers, Ltd., valued at \$7,891,909 and stocks in Bass International, Inc., valued at \$40 million. The SF 28 for this surety disclosed that he has 38 outstanding obligations as an individual surety on other bonds. The second surety represented that he has \$9,880 in cash and 9 million shares in Bass International, Inc., valued at \$36 million. Item 10 of his affidavit listed individual surety obligations for seven other contracts. Neither individual completed item 7a of the affidavit which required information regarding the fair value of solely-owned real estate; any mortgages or other liabilities on the real estate, item 7b; the location of any real estate, item 8; and the amount of assessed valuation of the realty for taxation purposes, item 8. The SF 28's of both sureties were certified by officers of Dominion Savings and Trust of Dallas, Texas.

The contracting officer requested that Labco submit the missing information in the SF 28's as well as proof of ownership by both sureties of all assets, real and personal. In response thereto, Labco submitted "supportive documentation" from the sureties' broker, Excel Surety Group. This documentation consisted of, among other things, new SF 28's for Sam and George Bass indicating that neither owned any real estate; that the number of outstanding bond obligations was more than originally disclosed for both individuals; copies of an agency agreement between the sureties and Excel; and letters of confirmation of ownership of the assets of Sam and George Bass.

After reviewing the supplemental information submitted by Labco, the contracting officer concluded that the sureties' net worths were unverifiable and unascertainable. The Corps determined that Labco was nonresponsible based on its failure to furnish adequate proof of ownership of the assets allegedly held by the individual sureties and failure to substantiate the claimed value of these assets. The contracting officer also based his determination on an investigative report prepared by the Corps' Norfolk District

Office of Counsel.^{2/} The contracting officer thereupon rejected Labco's bids as "non-responsive" by letter dated September 26, 1988.^{3/}

Labco contends that its individual sureties showed net worths that were sufficient to satisfy the requirements of FAR § 28.202-2(a) which requires that "the net worth of each individual must equal or exceed the penal amount of the bond." According to the protester, it submitted more than adequate evidence detailing ownership and the relative value of assets held by its sureties. Furthermore, the firm allegedly provided the contracting officer with "contact points" to confirm the value of the assets.

The Corps takes the position that it properly found Labco nonresponsible because the contracting officer discovered, through various sources, that there was reason to question the ownership, condition and value of the assets comprising the net worth of Labco's individual sureties. For example, the agency states that it was unable to verify ownership of Sam Bass' assets which purportedly included 100 percent ownership of Bass Stabilizers; that it obtained information that Bass Stabilizers is a small company with only two employees one of whom alleges that he, and not Sam Bass, owns 80 to 90 percent of Bass Stabilizers; and that it was unsuccessful in contacting the accountant who had prepared an audited financial statement indicating the net worth of Bass Stabilizers. Moreover, the Corps became aware that Bass Stabilizers is not in good standing with the State of Louisiana since it failed to file annual financial reports for 1984, 1985 and 1986.

With regard to the claimed ownership by Sam Bass of Bass International stock valued at \$40 million, the agency reports that it was unable to verify ownership in its many attempts to reach officials at Dominion Savings and Trust where the shares were being "held in safekeeping". The agency did discover, however, that Dominion does not have safe deposit boxes on its premises; therefore, the shares

^{2/} We are constrained in our discussion of the investigative report as the Corps has determined that it is not releasable outside the government.

^{3/} The Corps reports that this letter erroneously characterized the basis for rejection of the bids. The bids were rejected on the basis of a nonresponsibility determination and Labco was notified of the error in the September 26 letter by telegram dated October 17.

were allegedly being held "across the street." As to the value of the stock, the Corps ascertained through a licensed broker that the stock was considered to be over the counter penny stock with no recent trading activity and therefore no market value. The Corps did note that Labco had provided as evidence of the stock's value a confirmation slip of a purported transfer of Bass International shares in June 1988 but that information was not verified by the broker that issued the confirmation slip for the alleged stock transfer.

The contracting officer also learned that on August 24--some 3 weeks before executing the affidavits for Labco's bid bonds--George Bass indicated in an SF 28 submitted in connection with a Navy procurement that he owned real estate valued at approximately \$3 million, with liabilities against such holdings of \$2,100,000. Mr. Bass' claimed net worth on that SF 28 was \$16,884,115. This information raised doubts in the contracting officer's mind concerning this surety's financial resources since George Bass' claimed net worth increased from \$16,884,115 on August 24 to \$36,009,800 on September 1; his real estate holdings became nonexistent and he had discharged all liabilities previously outstanding on August 24.

Labco argues, however, in its comments on the agency report, that the information the contracting officer relied on was "libelous and distorted information provided by a self-serving third party to an unrelated procurement." Specifically, the protester alleges that the records reviewed by this third party with respect to Bass Stabilizers were "generally accompanied by an offsetting record which cleared the controversy" created by the documents the third party chose to provide to the government. Labco asserts that under these circumstances, all information presented by this third party should be disregarded. Labco further maintains that the contracting officer failed to give the firm reasonable time to provide all necessary information on its sureties and alleges that end of fiscal year constraints precipitated the contracting officer's decision to not afford the firm reasonable time to respond to his concerns.

The question of the financial acceptability of a surety is a factor in determining the responsibility of the bidder and may be established at any time prior to contract award. Hirt Co., B-230864, June 23, 1988, 88-1 CPD ¶ 605. In reviewing a bidder's responsibility, the contracting officer has broad discretion in making responsibility determinations and absent bad faith or the lack of any reasonable basis for his determination, the contracting officer may decide what specific financial qualifications to consider in determining

responsibility. Dunbar & Sullivan Dredging Co., B-232416, Sept. 29, 1988, 88-2 CPD ¶ 301. Here, in light of the failure of the sureties to provide credible evidence of ownership of their claimed assets and, correspondingly, the value of these assets, we think the contracting officer did not abuse his discretion in determining that Labco was nonresponsible.

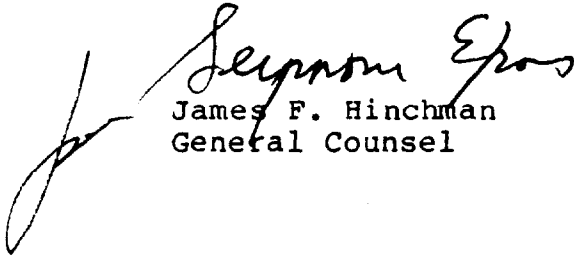
Our review of the record confirms the agency's position that significant inconsistencies/discrepancies in the claimed assets of both sureties reasonably cast doubt on their net worths. For example, as noted previously, a discrepancy exists between George Bass' claimed ownership of real estate valued at \$2,974,235 with liabilities of \$2,100,000 on August 24 and his inserting "none" on lines 7a and 7b of the SF 28 submitted by Labco dated September 12, indicating thereby that he owned no real estate or had any liabilities associated therewith. While the protester maintains in general terms that the information the contracting officer relied on was provided by a disgruntled third party, Labco does not challenge nor explain the discrepancies evidenced by George Bass' SF 28's dated August 24 and September 12, respectively. Nor does Labco explain how George Bass' net worth increased significantly within a 3-week period. Similarly, Labco does not deny or explain the apparent dispute over ownership of Bass Stabilizers, a company allegedly owned 100 percent by Sam Bass. Nor does the protester deny that annual financial reports for Bass Stabilizers were not filed with the State of Louisiana for the years 1984, 1985 and 1986.

In our view, the evidence in the record here indicates that the financial net worth of Labco's sureties were not corroborated by credible documentary evidence and the agency's attempts to independently verify ownership and value of the claimed assets were unsuccessful. We therefore conclude that the Corps properly determined Labco's sureties were unacceptable and deny the protests.

Finally, Labco's allegation, first raised in its comments, that the contracting officer did not afford a reasonable time for the firm to provide further evidence of its sureties net worth is untimely. According to our Bid Protest Regulations, a protest such as this must be filed with the contracting agency or our Office within 10 days after the protester knows or should know the basis for its

protest. 4 C.F.R. § 21.2(a)(2) (1988). On September 16, the contracting officer requested additional information on Labco's sureties and established the time for such submission as September 23. Since this protest ground was not filed within 10 days of Labco's receipt of the September 16 telegram, it is untimely and will not be considered.

Accordingly, the protests are denied in part and dismissed in part.



James F. Hinchman
General Counsel