



Comptroller General
of the United States

Washington, D.C. 20548

Ruppert

Decision

Matter of: KASDT Corporation

File: B-235620

Date: August 21, 1989

DIGEST

General Accounting Office will not disturb agency's nonresponsibility determination based upon unacceptability of individual sureties where the record does not show that procuring officials acted in bad faith in making the nonresponsibility determination or that there was no reasonable basis for the determination.

DECISION

KASDT Corporation protests the rejection of its bid under invitation for bids (IFB) No. N62474-86-B-0609, issued by the Navy for a hangar modification at the Marine Corps Air Station, Camp Pendleton, California. The Navy rejected KASDT's bid on the basis that the two individual sureties on its bid bond were unacceptable, and that KASDT thus was not eligible for the award.

We deny the protest.

The IFB required bids to be accompanied by a bid bond in an amount equal to 20 percent of the bid. At bid opening, on March 28, 1989, KASDT was the low bidder in the amount of \$3,775,724. Jennings International Corporation was the apparent second low bidder at \$3,885,000, and Abel Carreon, Inc., dba Federal Builders, submitted the third low bid in the amount of \$4,103,147. KASDT submitted a bid bond in the proper amount naming two individual sureties and, as required by the IFB, provided a completed Affidavit of Individual Surety (SF 28) for each surety (listing the surety's assets, liabilities, and net worth) and Certificates of Sufficiency from trust company officers attesting to the truth of the sureties' representations.

By letter to KASDT dated April 3, the contracting officer requested that each individual surety submit a balance sheet and income statement certified by a certified public

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accountant (CPA), together with a signed opinion by a CPA regarding the liquidity of any assets owned by the surety and his or her relative net worth. After reviewing the information submitted by KASDT in response to this request, the contracting officer determined that the information did not show sufficient and credible evidence of ownership and the value of the assets claimed in support of surety net worth. In this regard, although both individual sureties described interests in closely held corporations or partnerships with gold mining interests, the documentation they submitted was found not to verify that the individuals actually owned interests in these companies or establish the value of any interests in these companies. The contracting officer thus concluded that the individual sureties were not acceptable, and rejected KASDT as a nonresponsible bidder.

Jennings, the second low bidder was also found nonresponsible due to its inability or unwillingness to submit adequate or credible documentation of its sureties' claimed net worth, and the Navy thus made award to the third low bidder, Abel Carreon. Work under the contract has been suspended pending the disposition of this protest.

KASDT disputes the Navy's assessment that the SF 28s provided by its two sureties do not indicate sufficient or credible evidence of ownership or net worth, and argues that the Navy did not act in good faith to determine whether the sureties in fact had adequate net worth.

Federal Acquisition Regulation (FAR) § 28.202-2(a) requires the contracting officer to determine the acceptability of individuals proposed as sureties, and states that the information provided in the SF 28 is helpful in determining the net worth of a proposed individual surety. The contracting officer is not limited to consideration of the information in the SF 28, however, and may go beyond it where necessary in making his decision. Transcontinental Enters., Inc., 66 Comp. Gen. 549 (1987), 87-2 CPD ¶ 3; J & J Eng'g, Inc., B-233463.2, Feb. 13, 1989, 89-1 CPD ¶ 147. In the final analysis, the contracting officer is vested with a wide degree of discretion to apply his business judgment in determining surety acceptability, and when he finds a surety unacceptable we will defer to this judgment unless the protester shows that the determination of surety unacceptability was made in bad faith or lacked a reasonable basis. Cascade Leasing, Inc., B-231848.2, Jan. 10, 1989, 89-1 CPD ¶ 20.

We find that the contracting officer's determination here was reasonable. The record indicates that although KASDT listed its individual sureties, Messrs. Simmons and

Southworth, with net worths of over \$160,000,000 and \$33,000,000, respectively, it did not furnish any documentation verifying actual ownership or net worth of the assets listed. Other available information then led the contracting officer to question the integrity and credibility of both sureties. For example, the signatory on both of the Certificates of Sufficiency was determined to be a trustee of a trust, not an officer of a trust company as required by instruction 5 of the SF 28, and the Navy further discovered that the trust is not a trust company and is not registered with the trust division of the appropriate state (Maryland) banking authorities. The Navy has furnished documentation showing that the banking authorities, with responsibility for regulating trust companies in the state of Maryland, had no knowledge of the trust company listed by the sureties, and that there was no telephone directory listing for any trust company by the name given on the Certificate of Sufficiency in the city where the trust company was supposedly located.

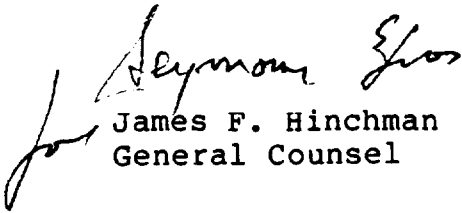
The record also indicated that much of the documentation submitted by the sureties was internally inconsistent. For example, the Navy determined that the documentation submitted indicated Mr. Simmons had inflated the value of one of his assets (Standco Industries, Inc.) by a factor of at least six. At the same time, Mr. Southworth, the other proposed surety, alleged ownership of property he held only as a trustee, not as owner, and there was no apparent right to transfer or encumber that property. Further, the bulk of both sureties' listed net worth was in the form of mineral interests, including gold certificates issued by Metal Mining Company, a company purportedly owned by the sureties. The sureties presented no evidence of ownership, however, and documentation indicated that the company owned not gold, but tailings, i.e., processed gold ore that allegedly still contains some gold; no assessment report was submitted indicating the amount of gold remaining in the ore.

The protester argues that the agency acted unreasonably by not conducting an independent investigation into the extent of the sureties' assets before making any decision regarding their acceptability. However, the contracting officer had no obligation to conduct such an investigation; we have specifically held that a contracting officer may rely on initial (SF 28) and subsequently furnished information regarding net worth submitted by a surety without further conducting his own independent investigation. See Northwest Piping, Inc., B-233796, Mar. 30, 1989, 89-1 CPD ¶ 333; Synthes (U.S.A.), B-231748, Aug. 19, 1988, 88-2 CPD ¶ 164. Moreover, the contracting officer had no need to extensively

investigate KASDT's sureties, since KASDT did not even furnish the specific information he requested. In this regard, KASDT did not submit, among other requested information, the CPA certified balance sheet the contracting officer requested to verify the income, assets, and liabilities of each surety. To the extent the agency did look behind the information submitted, it was unable to establish that the individual who signed both of the Certificates of Sufficiency is an officer of a bona fide trust company, or that he is otherwise an acceptable signatory as described in the instruction to the SF 28.

We conclude that the contracting officer reasonably relied on the available information and surety representations in concluding that the sureties' net worth had not been established with any kind of certainty; that the sureties thus were unacceptable; and that KASDT was not a responsible bidder.

The protest is denied.


for James F. Hinchman
General Counsel