



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrical Generation Technology, Inc.

File: B-235809

Date: August 31, 1989

DIGEST

Where solicitation required bidders using individual surety bonds to submit proof of ownership and value of assets claimed in sureties' net worth, protester was properly found nonresponsible where information submitted cast doubt on sureties' net worth.

DECISION

Electrical Generation Technology, Inc. (EGT), protests the rejection of its bid under invitation for bids (IFB) No. DACA63-89-B-0040, issued by the Fort Worth District of the Army Corps of Engineers for construction services. The Corps rejected EGT's bid because the agency found EGT's individual sureties to be unacceptable.

We deny the protest.

The IFB sought the electrical upgrade of the Maintenance Modernization Facility at Red River Army Depot in Texarkana, Texas. Bidders were required to furnish with their bids a bid guarantee (Standard Form 24) in an amount equal to 20 percent of the bid price or \$3 million, whichever was less. The solicitation also provided that:

"If individual surety bonds are furnished either for bid bond or for payment and performance bonds, the individual sureties must submit with their bonds proof of ownership and value of assets which they claim in their net worth. The Government's preferred method of proof is to have a statement of net worth prepared by a certified public accountant in accordance with generally accepted accounting principles. The statement of net worth on the SF 28, Affidavit of Individual

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Surety, is not of itself sufficient and will not be accepted absent additional proof of value and ownership. Bidders are required to furnish the name(s) of the individuals or organizations through whom the bonds are arranged or obtained."

The Corps received nine bids in response to the IFB. EGT's bid of \$229,800 was determined to be the low, responsive bid when the apparent low bidder was rejected as nonresponsive. EGT's bid bond, submitted through Surety Bond Services, Inc., was supported by two individual sureties, Franz McVay, and Carmen Arrigo. A Standard Form 28, Affidavit of Individual Surety, was submitted for each surety, indicating a net worth of \$1,952,754 for Mr. McVay and \$6,654,850 for Mr. Arrigo.

In accordance with the IFB, the contracting officer requested that EGT provide proof of ownership and value of the assets claimed for each individual surety. EGT submitted additional financial documents, compiled by the Surety Bond Services, which purported to show ownership and value of the assets. This information included financial statements compiled by Richard Widger, Certified Public Accountant.

The Corps states that after receiving the supplemental information submitted by EGT, it concluded that EGT had not submitted adequate proof to show ownership and value of the assets claimed by the sureties. Rather, the Corps states that the proof submitted by EGT tended to indicate that ownership of the assets was questionable and that the value claimed was not reasonably substantiated or was speculative.

In addition, the Corps states that, at the time it was reviewing the responsibility of EGT's sureties, the agency was aware of a criminal investigation being conducted of Surety Bonding Services and Richard Widger. Since the filing of the protest, three principals of Surety Bonding Services and Mr. Widger have been indicted for allegedly submitting documents containing false or fictitious information to a federal agency, devising a scheme to defraud and conspiring to defraud the United States.

EGT contends that its individual sureties showed a net worth that exceeded the penal sum amount of the bid bond and therefore are acceptable. EGT also argues that the criminal investigation and indictments are irrelevant to the acceptability of its sureties because EGT was not aware of

the allegations concerning its bond broker and the accountant who prepared the sureties' financial statements and that in any event the Corps, knowing of the criminal investigation, should have informed EGT of the investigation and allowed it to provide additional bid guarantees. In addition, EGT contends that the Corps' rejection of its bid was really due to the contracting officer's bias and prejudice against individual surety bonds.

The contracting officer's obligation to investigate individual sureties is set out at Federal Acquisition Regulation (FAR) § 28.202-2, which requires that the contracting officer determine the acceptability of individuals proposed as sureties. The regulation states that the information provided in the SF 28 is helpful in determining the net worth of proposed individual sureties. The agency, however, is not limited to the consideration of information contained in the SF 28. Restorations of Tejas, Inc., B-233014, Dec. 23, 1988, 88-2 CPD ¶ 623. Moreover, the contracting officer is vested with a wide a degree of discretion and business judgment in determining surety acceptability, and therefore we will not object to a finding that a surety is unacceptable unless the protester shows that there was no reasonable basis for the determination or shows that the agency acted in bad faith. Ram II General Contractor, Inc., B-234613, June 7, 1989, 89-1 CPD ¶ 532. In our view, the record reflects a reasonable basis for the nonresponsibility determination and does not show bad faith on the part of the Corps.

For Mr. McVay, EGT provided a February 1989 unaudited financial statement, prepared by Mr. Widger, who expressed no opinion regarding the statement. The surety's net worth was listed on the statement as \$2,229,354, while his SF 28 listed his net worth as \$1,952,754. The documents submitted by EGT did not establish proof of sole ownership or the value of the claimed assets. For example, the documents showed that the cash and stocks/bonds, listed by Mr. McVay, were not solely-owned but were owned jointly or as a trustee. In addition, Mr. McVay listed two parcels of land and a personal residence in California. The only evidence of value submitted for these assets was an apparent computer printout entitled Data Quick Information Network. The Corps did not consider this to be sufficient proof of value. Furthermore, the Data Quick Information sheet indicated that Mr. McVay was a secondary owner of the residence.

For Mr. Arrigo, EGT provided an April 1989 statement of financial condition, compiled by Mr. Widger. This document stated that it was a compilation and was "limited to presenting in the form of financial statements information that is the representation of the individual whose financial statement is presented. I have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them." The surety's net worth was indicated to be \$5,045,143, although the SF 28 listed his net worth as \$6,654,850. The bulk of Mr. Arrigo's assets were gold ore concentrate, stock and a 60 percent interest in Arrigo Mining & Milling Corporation. The Corps states that EGT did not submit sufficient proof of ownership or value for any of these assets.

Regarding the gold ore concentrate, EGT submitted warehouse receipts purporting to show that Mr. Arrigo had the mineral ore stored in bonded warehouses. However, these documents do not establish that the gold ore exists, that Mr. Arrigo is the sole owner or that it is worth what Mr. Arrigo claims for its value. Mr. Arrigo also claims to own stock worth \$2.5 million, but the only documentation provided by EGT were copies of shares of American Consolidated Holding Corp., which were issued to Arrigo Mining & Milling Corporation. The copies of these shares do not show any ownership interest by Mr. Arrigo or demonstrate the stock's fair market value. In addition, the Corps questioned the \$3.6 million claimed for the value of Mr. Arrigo's interest in Arrigo Mining & Milling Corporation. The sole asset of the corporation appears to be the Yukon Tunnel & Mill in Colorado but the documentation indicates that the tunnel and mill are actually owned by a Mr. John Vann of Fort Worth, Texas. Mr. Vann stated to the Corps that he is the owner of the tunnel and mill but that Arrigo Mining & Milling Corporation has an agreement to purchase the tunnel and mill but is behind in its payments. Furthermore, the permit issued by the Colorado Mined Land Reclamation Division to Arrigo Mining & Milling Corporation is for the mining of tungsten and not the mining of gold, silver, lead, copper and zinc which Arrigo Mining & Milling Corporation claims to be mining. Mr. Vann also stated to the Corps that he used to mine tungsten ore from the Yukon tunnel but had ceased mining operations because it had proved to be unprofitable.

The Corps also performed a credit check on Mr. Arrigo which showed that 10 civil judgments have been taken against Mr. Arrigo since 1982, 5 of which remain unsatisfied. The credit check also revealed that there are currently two federal tax liens filed against Mr. Arrigo, one of which dates back to 1985.

The contracting officer concluded from his investigation that adequate proof of ownership and value had not been submitted on behalf of the two sureties. The documents submitted raised questions concerning the ownership and value of the claimed assets, and the financial statements were prepared by an accountant who was under criminal investigation, and has now been indicted, for filing false statements and attempting to defraud the United States. In light of this record, we find that the contracting officer's determination had a reasonable basis. Moreover, we have held that where officials of a bond brokerage firm are under criminal investigation that this information casts serious doubt as to the integrity of the sureties and raises a serious question concerning their credibility. See Surface Preparation and Coating Enters., Inc., B-235170, July 20, 1989, 89-2 CPD ¶ ____.

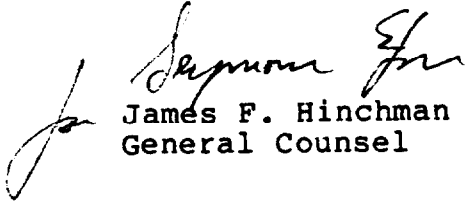
EGT argues that since it was unaware of the allegations concerning its bond broker and accountant that the Corps should have informed it of the criminal investigation and allowed EGT to provide additional bid guarantees. We do not agree. The very nature of the criminal investigation against the principals of Surety Bond Services and Mr. Widger required that the investigation be kept confidential.^{1/} In any event, EGT would not be entitled to substitute sureties after bid opening since such a substitution would alter the joint and several liability of the sureties under the bid bond, which is the principal factor in determining the responsiveness of the bid to the guarantee requirement. Texas Elevator Co., Inc., B-233009, Oct. 25, 1988, 88-2 CPD ¶ 393.

EGT also argues, in its comments, that the contracting officer exhibited bad faith by stating that all individual surety bonds were bad and that he rejected them every chance that he got. Contracting officials are presumed to act in good faith and, in order to show otherwise, there must be convincing proof that the agency had a specific and malicious intent to harm the protester. Ram II General Contractor, Inc., B-234613, supra. The record here does not support the protester's allegation of bad faith. Rather, the contracting officer provided EGT with the opportunity to

^{1/} In fact, the information regarding criminal investigation was submitted to our Office under seal and was kept confidential until the indictments had been handed down.

establish the financial acceptability of its proposed sureties and, as noted above, the contracting officer's determination of unacceptability was supported by a reasonable basis.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel