



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Munford Construction Company

File: B-239830

Date: October 2, 1990

Ferris S. Ritchey, Jr., Esq., Ritchey & Ritchey, for the protester.

E. Manning Seltzer, Esq., and Mark E. Davis, Esq., Zorc, Rissetto, Weaver & Rosen, for McGinnes Brothers, Inc., an interested party.

Craig R. Schmauder, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer's rejection of individual sureties as unacceptable was reasonable where attempts to verify the statement of assets of each surety were unsuccessful and certificates of sufficiency, contained in each surety's affidavit of Individual Surety were questionable, casting further doubt on the accuracy of the information provided by the sureties.

DECISION

Munford Construction Company protests the rejection of its bid under invitation for bids (IFB) No. DACW01-90-B-0016 issued by the United States Army Corps of Engineers, Mobile District, for the construction of the Bigbee Valley Recreation Area in Aliceville, Alabama. The Corps of Engineers rejected Munford's bid primarily because its individual bid bond sureties were unacceptable. In addition, the contracting officer considered information that Munford is currently under investigation by the Army Criminal Investigation Command (CIC).

We deny the protest.

The IFB required bidders to submit bid bonds in an amount equal to 20 percent of the bid price or \$3 million, whichever was less. If the bid bond named individuals as

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sureties, the bidder was to provide a completed standard form (SF) 28, Affidavit of Individual Surety, setting forth financial information on each individual, including a listing of solely-owned assets, liabilities, and net worth, supported by a Certificate of Sufficiency. This certificate may be signed by "an officer of a bank or trust company" who certifies that, based upon a personal investigation, the surety is responsible and qualified to act as such, and, to the best of the knowledge of the certifier, that the facts stated by the surety in the SF 28 are true.

Eight bids were received by bid opening on March 1, 1990. Munford submitted the apparent low bid of \$4,229,672.63. The next low bid was \$4,652,732. Munford submitted a bid bond guaranteed by two individual sureties, Frank and Grace Cockrell, husband and wife, whose SF 28s were attached.

On her SF 28, Grace Cockrell indicated her net worth as \$102,526,180, with listed assets including: (1) solely-owned real estate consisting of assignments of oil and gas leases, valued at \$39,526,180; (2) stocks in Cockrell Productions and in Contractors Surety & Fidelity Co., Ltd. (the Cockrells' bid bond broker), two closely-held corporations, valued at \$63,500,000; (3) cash of \$400,000; and (4) jewelry valued at \$200,000. No liabilities were listed. Frank Cockrell indicated his net worth as \$160,073,082 with listed assets including: (1) solely-owned real estate consisting of assignments of oil and gas leases valued at \$97,073,082; (2) stocks in the two corporations listed above, valued at \$63,500,000; (3) cash of \$400,000; and (4) jewelry valued at \$200,000. Again, no liabilities were listed. Each surety listed outstanding bond obligations and each individual surety's Certificate of Sufficiency was signed by a "Trust Officer" of the "Security Trust Incorporation," which gives its address as Atlanta, Georgia, but which the record shows is incorporated in the Turks and Caicos Islands, British West Indies.

The contracting officer's staff investigated the sureties' assets in an attempt to verify their ownership and value. Because there were over 200 claimed assignments of oil and gas leases, the agency tried to verify through public records the largest lease interest of 501.7 acres, and a group of assignments by Victor Bates and Associates, Inc. to the Cockrells. The agency was advised that the lease interest on the 500-acre tract had been reassigned to S&C Investment Corporation in June, 1986, and was no longer owned by the Cockrells. The agency was also advised that the leases from Bates and Associates were owned by Northern Gas and Oil Company of Norton, Ohio. A subsequent investigation revealed that the Norton telephone directory had no

listing for Northern Gas and Oil, that Northern Gas and Oil is not located at the address given to the agency, and that Northern Gas and Oil is owned by "Smith and Son" and is a service station. Based on these findings, the contracting officer determined that the Cockrells no longer own some of the assignments listed in their affidavits and that this discrepancy "casts doubt as to how many assignments listed actually belong to the Cockrells." In addition, the agency concluded that it could not ascertain the value of the leases without resorting to the services of geologists and professional appraisers.

To determine the value of the Cockrells' stock shares, the contract specialist contacted an employee of the Merrill Lynch brokerage firm who advised the agency that neither Cockrell Productions or Contractors Surety & Fidelity Co., Ltd. were listed on a national security exchange.

When the contracting specialist contacted the bank listed on the SF 28s to verify the cash amount listed on the affidavits, the bank refused to release any information without the Cockrells' consent. The agency had reason to believe, however, that this account had been closed.^{1/}

The Cockrells had provided no verifiable evidence of the market value of the jewelry listed on their affidavits.

The agency also examined the Certificates of Sufficiency executed on the reverse of the sureties' affidavits. Because the affidavits were certified for sufficiency by a "Trust Officer" of the "Security Trust Incorporation" of Atlanta, the contract specialist contacted the State of Georgia and learned that the Georgia Department of Banking and Finance had denied Security Trust Incorporation permission to use the word "Trust" in its name, and in 1989 had warned Security Trust Incorporation that it should not sign certificates of sufficiency since it is not a "trust company" under Georgia law. Accordingly, the contracting

^{1/} During the course of the Corps of Engineers' investigation, it became aware that the Cockrells had been found unacceptable as individual sureties by at least two other agencies. The contracting activity obtained a memorandum from the Marine Corps prepared earlier in 1990 in support of that agency's rejection of the Cockrells as unacceptable sureties. That memorandum related that an inquiry of the bank made with the permission of the Cockrells' bid bond broker resulted in advice that the account was closed.

officer determined that the "Trust Officer" was unqualified to sign the Certificate of Sufficiency.

During the course of the agency's investigation, Munford contacted the Corps of Engineers to ask when award would be made and was informed that the Corps was considering rejecting Munford's bid. Munford filed a protest with the contracting officer and on April 13, met with the contracting officer, agency legal counsel and civilian contract specialist. At this conference, the agency advised Munford that it was considering rejecting the firm's bid because the agency believed that the individual sureties had misstated their assets, the ownership and value of the assets could not be substantiated and because the Certificates of Sufficiency were signed by a trust officer of a "trust company" which had not been approved or certified by the State of Georgia. The agency personnel also stated that a new regulation on the acceptability of individual sureties which became effective in late February^{2/} would apply to this solicitation since bid opening was not until March 1. The agency's position was that the sureties on Munford's bid did not meet the requirements of this new regulation. Although counsel for Munford disputed the agency's statements by letter dated April 25, no further evidence of the ownership or value of the assets was provided.

After this meeting the contracting officer was advised by the United States Attorney for the Northern District of Alabama that Munford was being investigated for possible violations of 18 U.S.C. § 1001, the "False Statement Act," and 18 U.S.C. § 287, "Presenting False Claims to the United States." The contracting officer also was advised by another source that the president of Contractors Surety & Fidelity Co., Ltd., and the company are being investigated by the Criminal Investigation Division (CID) in Atlanta, Georgia.

Based on the findings described above, the contracting officer determined that Munford's individual sureties did not meet the requirements set forth in FAR § 28.203 and, therefore, rejected Munford's bid for lack of acceptable individual sureties. In addition, the contracting officer stated he had considered the advice from the United States Attorney in finding Munford nonresponsible. The agency informed Munford of its rejection by letter dated May 9.

^{2/} Effective February 26, 1990, Federal Acquisition Regulation (FAR) § 28.203 (FAC 84-53), requires individual sureties to pledge specific acceptable assets and provide a security interest in the pledged assets with the bond.

Munford challenges the rejection of its bid, contending that FAR § 28.203 on individual sureties should not apply to this procurement since it was not in effect at the time the solicitation was issued and subsequent amendments did not incorporate it into the solicitation. Moreover, Munford says the bid bond it submitted should be acceptable under either FAR § 28.203 or FAR § 28.202-2 (FAC 84-42), the regulation governing the acceptability of individual sureties which was in effect at the time the solicitation was issued. In this regard, in its final comments on the agency report, Munford attempts to trace further transactions beyond those which the agency learned through its own investigation, in an effort to establish Frank Cockrell's ownership of the oil and gas interests claimed on his SF 28.

Munford also contends that the Certificates of Sufficiency submitted with its bid were not defective, arguing that whether Security Trust Incorporation is approved "as a trust to do business in the State of Georgia" is essentially irrelevant to whether a trust officer of a firm incorporated in the Turks and Caico Islands is eligible under the FAR to sign Certificates of Sufficiency for Federal government procurements.

Moreover, Munford argues that the \$800,000 bank accounts (\$400,000 listed by each surety) alone are sufficient to cover the potential liability of \$420,000 (the difference between Munford's bid and the next low bid) to protect the government. Munford says that the Cockrells would have verified these accounts and given the bank permission to release account information had the agency so requested. Again, in its comments on the agency report, Munford attached partially illegible facsimile-transmitted copies of bank transaction slips made on a number of the Cockrells' accounts to show that as of March 1, 1990, each surety had funds of at least \$400,000 in the bank.

Finally, Munford questions whether it is in fact under investigation; denies that it made false statements or that it presented false claims to the government; and argues that due process necessitates that Munford be given written notice and an opportunity to respond to such charges before it is found nonresponsible on this basis.3/

3/ Munford contends this is the second time it has been denied this contract for reasons relating to responsibility. Before this IFB was issued, the same work had been the subject of another contract, which had been awarded to

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Bid bond requirements are to assure the government that the bidder will execute the contract and provide required payment and performance bonds by placing the liability for excess procurement costs on the surety if the bidder fails to honor its commitments. We need not decide whether under the circumstances of this case the more stringent requirements now contained in FAR § 28.203 should be applied in determining the acceptability of Munford's individual sureties because we agree with the Corps that even under the prior rules the agency's rejection of these sureties as unacceptable was reasonable.

An individual surety, to be acceptable, must have a net worth which equals or exceeds the penal amount of the bond and the information provided in the SF 28 may be used in determining the net worth of a proposed individual surety. While the contracting officer must determine the acceptability of individuals proposed as sureties, he or she is not limited to consideration of only the information in the SF 28, but may go beyond it where necessary in making his or her decision. KASDT Corp., B-235620, Aug. 21, 1989, 89-2 CPD ¶ 162. In reviewing the acceptability of a proposed individual surety, the contracting officer has broad discretion, and this Office will defer to the contracting officer's decision unless the protester shows bad faith or the lack of any reasonable basis for the determination. 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 Munford listed its individual sureties, Mr. and Mrs. Cockrell, with net worths of over \$160,073,082 and \$102,526,180, respectively, and both sureties completed affidavits including a description of their assets and a listing of their outstanding bond obligations, those affidavits were cast in doubt

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Munford under the SBA's set-aside program for small, disadvantaged businesses. According to the agency, Munford had difficulty obtaining performance and payment bonds and requested that the SBA permit it to become a joint venture in order to obtain bonding. The SBA denied this request. In addition, the SBA and the Corps learned that Munford was under criminal investigation. The SBA and the Corps agreed that termination of Munford's contract was warranted because of Munford's inability to obtain performance and payment bonds. Subsequently, the Corps decided to solicit bids on a competitive basis and issued the subject solicitation.

when the contracting agency began making a number of inquiries regarding the information provided on them. In particular, the Corps of Engineers could not verify that the sureties owned the gas and oil leases that they claimed and found, in fact, that the lease interest on a 500-acre tract had been reassigned to S&C Investment Corporation. Although the protester argues that a more extensive investigation by the agency would have revealed that Frank Cockrell was a joint owner of S&C we think there are limits to the effort an agency reasonably may be expected to expend in tracking successive transfers or exchanges of a claimed asset. Even assuming Cockrell is a joint owner of S&C, the inclusion of jointly-held property which is not identified as such on the SF 28 only casts doubts on the reliability of the information provided, see Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD ¶ 218, and there is some question whether jointly-held assets should be counted in determining the surety's net worth. See National Hazard Control Corp., B-237194, Feb. 9, 1990, 90-1 CPD ¶ 168. Moreover, as indicated above, the directions on the SF 28 only solicited the value of the individual surety's "solely-owned" property or real estate as assets relevant in determining his or her net worth. Although Munford also disputes the agency's findings regarding the assignments to the Cockrells by Victor Bates and Associates, the protester provides no substantiating documentation.

As for the sureties' claimed values of stocks, we note that the shares apparently are owned exclusively by them, calling into question the liquidity of these assets. Additionally, the agency's attempts to verify the value of the claimed assets were unsuccessful since the companies are not listed on any exchange and thus reliable price quotations for the securities were unavailable.

As for the weight to be given to the Certificates of Sufficiency signed by Security Trust Incorporation, we have previously stated that such certificates are of a "questionable nature" when executed by a British West Indies corporation, not state or federally regulated, which had been asked by the state in which it was located not to sign such certificates. Southern California Eng'g Co., Inc., B-234515.2, Aug. 21, 1989, 89-2 CPD ¶ 156. See also, Southern California Eng'g Co., Inc., B-238010.2, Apr. 5, 1990, 69 Comp. Gen. _____, 90-1 CPD ¶ 365. Therefore, we think it was reasonable for the contracting officer to take into account these circumstances in determining the acceptability of the individual sureties.

With regard to Munford's assertion that the Corps of Engineers rejected its sureties without adequate

investigation, we have held that a contracting officer may rely on the initial and subsequently furnished information regarding net worth submitted by a surety, without further conducting an independent investigation. Southern California Eng'g Co., Inc., B-238010.2, supra. Because the question of whether an individual surety has identified sufficient assets to be considered acceptable is a matter of responsibility, the contracting officer should ordinarily solicit and consider information on this issue any time before award. T&A Painting Inc., 66 Comp. Gen. 214 (1987), 87-1 CPD ¶ 86; Norse Constr., Inc., B-216978, Feb. 25, 1985, 85-1 CPD ¶ 232. Compare Seaworks, Inc., B-226631.2, Dec. 22, 1989, 89-2 CPD ¶ 581 (contracting officer need not request additional information where information of record casts legitimate doubts on the integrity and credibility of the individual sureties). Here, although the agency apparently did not solicit additional information directly from the sureties, the contracting officer went well beyond the documents submitted to determine the responsibility of each surety. Most significantly, we note that Munford was put on notice at a meeting with agency officials prior to the rejection of its bid that the agency questioned the acceptability of its sureties. Nevertheless, Munford simply disputed the agency's concerns without submitting documentation from its sureties which would support the information in the SF 28s. In this regard, it is the surety's obligation to provide the contracting officer with sufficient information to clearly establish that it has sufficient financial resources to meet its bond obligations. Hirt Co., B-230864, June 23, 1988, 88-1 CPD ¶ 605.

Munford also argues that in deciding to reject its bid, the Corps ignored the bank account which Munford says could have been verified had the agency asked the Cockrells to permit the bank to release account information and which alone would satisfy the bonding requirements. It is our view, however, that once the accuracy of the sureties' representations reasonably have been called into question, then notwithstanding the alleged adequacy of other assets, the agency is justified in rejecting the sureties. Southern California Eng'g Co., Inc., B-238010.2, supra.

Finally, we need not resolve whether the contracting officer properly considered the information provided by the United States Attorney in rejecting Munford's bid. The contracting

officer reasonably determined that Munford's individual sureties were unacceptable. This determination alone provided a proper basis for rejecting Munford's bid.

The protest is denied.



for James F. Hinchman
General Counsel