



Comptroller General
of the United States

Washington, D.C. 20548

146901

Decision

Matter of: Pamfilis Painting, Inc.

File: B-247922

Date: June 15, 1992

Sidney J. Cohen, Esq., for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Stephen J. Gary, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder failed, after being given a second opportunity, to furnish documentation required to support the acceptability of bidder's proposed individual surety, the agency reasonably found surety unacceptable and bid was properly rejected.

DECISION

Pamfilis Painting, Inc. protests the Department of the Navy's award of a contract to D&K Painting Company (D&K), under invitation for bids (IFB) No. N62474-91-B-0616, for painting services at the Naval Air Station, Moffett Field, California. Pamfilis objects to the rejection of its bid on the ground that its proposed individual bid bond surety was unacceptable.

We deny the protest.

The solicitation required that a bid bond equal to 20 percent of the bid price be submitted with the bid. In the event the bid bond was executed by an individual surety, the IFB's "Instructions to Bidders" also required the offeror to obtain from the surety and submit with its bid a completed standard form (SF) 28, Affidavit of Individual Surety, and a pledge of assets. Further, if real estate assets were pledged, the solicitation generally repeated the requirements of Federal Acquisition Regulation (FAR) § 28.203-3(a), specifying that the bidder provide:

"(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee

simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the government as required by [Federal Acquisition Regulation] FAR § 28.203-3(d);

"(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

"(iii) A copy of the current real estate tax assessment of the property or a current appraisal prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally acceptable appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation. . . ."

Pamfilis' bid of \$397,000 was the apparent low bid at bid opening on September 24, 1991. To satisfy the IFB's bid bond requirement, Pamfilis proposed an individual surety, Mr. Elias Pamfilis, who pledged: real property in Daly City, California, which was listed as Mr. Pamfilis' "home address" in his executed Affidavit of Individual Surety; property on Langton Street, in San Francisco, California; and two other properties in San Francisco, one on Mission Street and one on Precita Avenue. However, by letter dated November 13, the Navy advised Pamfilis that the agency could not evaluate the acceptability of its proposed individual surety until the documentation required by the IFB and by the FAR was provided. Specifically, the Navy requested that the surety provide the required certificate of title, evidence of the amount due under any liens shown in the evidence of title, evidence of a lien in favor of the government, and a current real estate tax assessment or appraisal.

Mr. Pamfilis responded by submitting additional documentation, including a "property profile," prepared by a title insurance company, for the Langton Street property. This document, prepared in October 1991, indicated that the property was owned jointly by Elias and Mersini Pamfilis and had an appraised value of \$240,000.¹ Pamfilis also provided a copy of a joint tenancy deed indicating that the Daly City property had been conveyed to Elias and Mersini Pamfilis as co-owners in 1971.

¹There was no certification that the appraisal had been prepared in accordance with the FAR requirements as set forth in the IFB's Instructions to Bidders.

After reviewing this additional documentation, the Navy, by letter dated December 12, advised Pamfilis that it still had not met the documentation requirements of the IFB and the FAR. Among other things, the agency reiterated the requirement for certificates of title from a title company certified by the Department of Justice, and advised Pamfilis that "the property profile is not adequate as a certificate of title." The Navy cautioned Pamfilis that its bid might be rejected if the requested documentation was not submitted within 10 working days of receipt of the letter.

In response to the second Navy request for documentation, Pamfilis submitted a "litigation guarantee" for the Langton Street property. This document, dated December 24, 1991, indicated that title to the property was "vested in Elias Pamfilis and Mersini Pamfilis, his wife, in joint tenancy," and listed the following encumbrances: deed of trust (\$112,000); deed of trust (\$100,000); state tax lien (\$31,084); and lien for delinquent property taxes (\$27).

Although the Navy initially rejected Pamfilis as nonresponsible based upon its submission of a below cost bid, the agency ultimately determined that Pamfilis' individual surety was unacceptable and that Pamfilis was nonresponsible for this reason. Specifically, the agency concluded that the Langton Street property was unacceptable because the encumbrances exceeded the value of the asset; the property profile submitted for the Langton Street property indicated an appraised value of \$240,000, while the listed encumbrances totaled \$243,111. The agency also determined that, since the Daly City property was stated to be Mr. Pamfilis' "home address," it was unacceptable under FAR § 28.203-2(c)(3)(ii), which provides that "[u]nacceptable assets include but are not limited to . . . [r]eal property which is a principal residence of the surety." Furthermore, Mr. Pamfilis still had not provided the required certificate of title for any of the pledged properties.

In its protest, Pamfilis generally denies that it failed to provide the documentation necessary to show that its proposed surety was acceptable. Pamfilis specifically disagrees with the Navy's finding that the liens encumbering the Langton Street property exceeded the value of that property. In addition, Pamfilis disputes the agency's conclusion that the Daly City property was a principal residence of the individual surety (and therefore unacceptable for that reason); it claims that Mr. Pamfilis' primary residence instead is in Athens, Greece.

The contracting officer is vested with a wide degree of discretion and business judgment in determining the acceptability of an individual surety, and we will not question such a determination so long as it is reasonable. Santurce Constr. Corp., 70 Comp. Gen. 133 (1990), 90-2 CPD ¶ 469. It is the surety's obligation to provide the contracting officer with sufficient information to clearly establish the surety's acceptability. Southern California Engr'g Co., Inc., 69 Comp. Gen. 387 (1990), 90-1 CPD ¶ 365. Nevertheless, agencies may not automatically reject a bidder for unacceptable individual sureties because the SF 28 and supporting documentation contain minor defects that might be easily remedied. Gene Quigley, Jr., 70 Comp. Gen. 273 (1991), 91-1 CPD ¶ 182. Since these matters concern bidder responsibility, absent any evidence that the sureties lacked integrity or credibility, the agency should give the bidder the opportunity to have his sureties provide satisfactory explanations or pledge sufficient and acceptable assets. Id. The procuring agency, however, is not required to indefinitely delay an award to allow a bidder to show that its surety is responsible. Id.

In this case, we find that although the agency afforded Pamfilis ample opportunity to document the acceptability of its individual surety, the information furnished by Pamfilis did not clearly establish the acceptability of its proposed individual surety. First, with respect to the Langton Street property, we agree with the agency that the "property profile," although prepared by a title insurance company, nevertheless did not constitute the required certificate of title, since it contained the following disclaimer:

"This property profile is not the result of a title search or based on a complete examination of public records. It is not intended to be nor should be relied on as an accurate representation of the status of title."

In view of this disclaimer, the agency reasonably determined that this document failed to provide the adequate assurance of title required by the solicitation and FAR § 28.203-3(a).

Furthermore, we find that the Navy reasonably concluded that based upon the "litigation guarantee" with respect to the Langton Street property, prepared in December 1991, the value of the property would not support the additional lien required for this procurement. In this regard, FAR § 28.203(b) provides that "the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety must equal or exceed the penal amount of each bond." (FAR § 28.203-2(b)(4) also provides that real estate assets will be accepted at only "100 percent of the most current tax

assessment value (exclusive of encumbrances) or 75 percent of the properties' unencumbered market value provided a current appraisal is furnished.") Although the appraisal submitted by Pamfilis lacked the required certification that it had been conducted in accordance with generally accepted appraisal standards, the Navy, in evaluating this asset, nevertheless accepted the indicated appraised value of \$240,000. The information furnished by Pamfilis, however, indicated that the property already was subject to encumbrances totaling \$243,111. Thus, even assuming that the uncertified appraisal furnished by Pamfilis was correct, it reasonably appeared that the Langton Street property already was subject to encumbrances in excess of its appraised value.

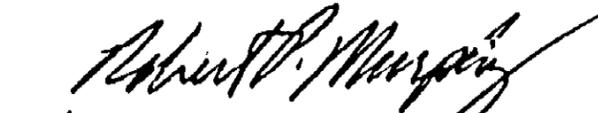
Subsequently, in connection with this protest, Pamfilis has submitted documents which, according to the protester, show that one of the liens listed in its litigation guarantee for the Langton Street property has been reduced in amount and that two others have been paid in full. However, since none of these documents was provided prior to its nonresponsibility determination in this regard, they have no bearing on the reasonableness of the agency's determination, which relied upon the documentation furnished by Pamfilis itself. Id.

We further conclude that the agency also had a reasonable basis for finding the other three pledged properties unacceptable. With respect to the Dale City property, since the property was listed on the Affidavit of Individual Surety as Mr. Pamfilis' "home address," the agency, in our view, reasonably concluded that the property was his principal residence, and therefore unacceptable under FAR § 28.203-2(c)(3)(ii). Although Mr. Pamfilis now asserts that his principal residence was in Athens, Greece, the agency had no reason at the time to question the surety's written statement under oath that the Dale City property was his home address. Furthermore, Pamfilis failed to furnish the required certificate of title prepared by a title insurance company, and instead submitted only an unacceptable "property profile" of the type submitted with regard to the Langton Street property, which likewise disclaimed any certification that could be relied upon. The profile did, however, indicate that the property had been conveyed in 1971 to "Elias Pamfilis and Mersini Pamfilis, his wife," as joint tenants. This also rendered the property unacceptable. FAR § 28.203-2(c)(3)(iii) provides that "[u]nacceptable assets" include "[r]eal property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly"; the only surety pledged to guarantee the bid was Elias Pamfilis.

With respect to the Mission Street and Precita Avenue properties in San Francisco, the record shows that Pamfilis did not submit a certificate of title prepared by a title insurance company, but instead furnished only copies of recent tax assessments. Furthermore, these indicated that both properties were jointly owned by Elias and Mersin Pamfilis. Thus, these properties, jointly-owned but pledged only by Elias Pamfilis, also were unacceptable under FAR § 28.203-2(c)(3)(iii). Consequently, we conclude that the protester provided the agency no basis for finding that these properties were acceptable assets as defined in the FAR.

Again, while an agency generally should make reasonable efforts to obtain additional documentation regarding an individual surety's acceptability, Don Kelland Materials, Inc., B-245801, Feb. 3, 1992, 92-1 CPD ¶ 135, it is not required to wait an unreasonable amount of time to allow a bidder to demonstrate such acceptability. Gene Quigley, Jr., supra. Here, even after receiving a second opportunity from the agency, Pamfilis failed to show that the proposed individual surety had the required interest in acceptable assets. Accordingly, we find that the Navy reasonably found the individual surety unacceptable and, therefore, properly rejected the protester's bid. Don Kelland Materials, Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel