



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gulf & Texas Trading Company

File: B-253991.2

Date: January 24, 1994

Chester Slay for the protester.

Lester Edelman, Esq., Army Corps of Engineers, for the agency.

M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's rejection of protester's bid bond based on reliance upon tax assessed value rather than market appraised value of bid bond surety's real estate holding, in order to determine if pledged assets were sufficient to cover bid bond, was reasonable where appraisal of property was not current, as required by the Federal Acquisition Regulation, and tax assessed value was less than required bid bond.

DECISION

Gulf & Texas Trading Company (G&TT) protests the rejection of its bid and the award of a contract to Old River Shipbuilding & Repair, Inc. under invitation for bids (IFB) No. DACW64-92-B-0017, issued by the Army Corps of Engineers for removal and disposal of two sunken vessels around Orange Harbor Island, Orange County, Texas. The Corps rejected G&TT's low bid as nonresponsive based on a determination that G&TT's bid bond surety failed to pledge adequate security.

We deny the protest.

The IFB required bidders to furnish a bid guarantee in the form of a bid bond or other firm commitment. In accordance with Federal Acquisition Regulation (FAR) § 28.101-2, a bid guarantee in the amount of at least 20 percent of the bid price was required. In response to the solicitation, G&TT submitted the low bid of \$72,000, requiring a minimum bid bond in the amount of \$14,400. G&TT's bond initially named the Louis Family Trust, Karen Slay, Trustee as surety. As security for the bond, the surety pledged a parcel of real property, tract 3 of Pleasure Islet Subdivision, Port Arthur, Texas. The Corps learned, however, that tract 3 had

been recorded on the State Marine Registry as a State Marine Superfund Site, and that the property was subject to a state court injunction against use except for clean-up activities. The Corps concluded that as the repossessing party under the bond, it would be enjoined from using tract 3; thus, the land had no value. By letter dated September 2, 1992, the contracting officer notified G&TT that tract 3 provided inadequate security for the bond, its bid bond therefore was unacceptable as submitted, and G&TT would be permitted to substitute an acceptable bid bond.

G&TT withdrew its original bond and surety and substituted a new bond with the Onnie Family Trust, Karen Slay, Trustee as the surety. This surety's pledged asset was tract 7 of the same subdivision as the property of the previously submitted surety. The Corps determined that because tract 7 was under the same previously described injunction as tract 3 it also provided inadequate security for the bond. Additionally, the Corps reviewed the assessed tax value of tract 7--\$6,830 in 1992 with \$11,795 in delinquent taxes--and determined that the property value was insufficient to cover the bond obligation. The contracting officer thus informed G&TT that the substituted surety was unacceptable, that the firm's bond and bid were unacceptable, and that award would be made to the next lowest qualified bidder. G&TT protested the rejection of its bid bonds to the agency on November 24 and the Corps denied G&TT's agency-level protest on June 21, 1993. Award was made June 30.

On July 7, G&TT protested the award and rejection of its bid to our Office, but withdrew that protest on July 21, when the agency agreed to reconsider its rejection of the firm's bid, and stop performance on the contract until a decision was reached. G&TT argued to the agency that the tax assessed value of tract 7 should not be the basis for determining the value of the surety's property and, in this regard, submitted a professionally prepared appraisal dated January 29, 1992, showing the market value of tract 7 as \$246,314, before any encumbrances. The Corps determined, however, that the January 29 appraisal was not current--i.e., not within 6 months of the date of the bond, September 14, 1992, as required by FAR § 28.203-3(a)(3)--and that it therefore was unacceptable as a measure of the property's value. The Corps thus concluded that it was reasonable for the contracting officer to use tract 7's assessed tax value of \$6,830 for valuation purposes, and to reject G&TT's bid based on the failure to furnish a bond in the \$14,400 required bid bond amount. G&TT filed this protest with our Office on September 10, challenging the Corps' conclusion.

Bid guarantees are designed to secure payment from a surety in the event the bidder fails to fulfill its obligation to execute a written contract and provide proper performance and payment bonds. Gene Quigley Jr., 70 Comp. Gen. 273 (1991), 91-1 CPD ¶ 182. A bid which fails to provide a sufficient bid guarantee generally must be rejected as nonresponsive. See id. The FAR requires contracting officers to determine the acceptability of individuals proposed as sureties and whether the surety's pledged assets are sufficient to cover the bid bond. FAR § 28.203(a). In this regard, when a bond covered by a security interest in real property is submitted, as here, the surety must provide, among other things, "a copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser. . . ." FAR § 28.203-3(a)(3). The FAR further provides that real estate "will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties' encumbered market value provided a current appraisal is furnished." FAR § 28.203-2(b)(4). We will not disturb an agency's determination of the adequacy of a surety's pledged assets unless it is shown to be unreasonable. Eastern Maintenance Servs., Inc., B-220395, Feb. 3, 1986, 86-1 CPD ¶ 117.

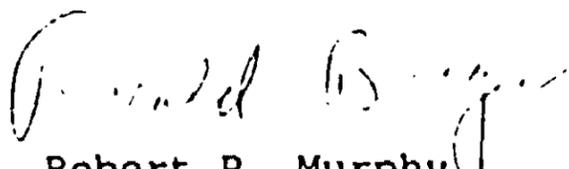
The Corps' rejection of the protester's bid bond based on insufficient security pledged by the surety was reasonable.¹ The protester questions the "great disparity between the tax [assessed] value and the professional appraisal" for the property and also attempts to discredit the tax appraisal by maintaining that it agreed to the "low appraisal" in settlement of a suit against county authorities to reduce the assessed value of the property. However, the facts remain, and are undisputed by the protester, that the January 29 market appraisal was not conducted within 6 months of the September 14 bond date, as required by the FAR, and that the assessed tax value of the property was \$6,830.² In accordance with the FAR, the

¹Since G&TT withdrew its originally submitted bid bond and surety pledging tract 3 as security, substituted a new bond and surety pledging tract 7 as security, and did not timely protest the contracting officer's rejection of tract 3, we consider here only the sufficiency of tract 7 as security for the bond.

²The protester's characterization of the assessed amount as low due to settlement of the previously mentioned law suit is irrelevant. There is no evidence in the record of an inaccurate assessment. The fact remains that \$6,830 was the amount of the tax assessment and the agency relied on it.

agency properly determined that it could not rely on the January 29 appraisal to establish the value of tract 7 since it was not current, and that it was required to rely on the tax assessment. Since the assessed tax value of tract 7, \$6,830 (notwithstanding the \$11,795 in delinquent taxes) failed to meet the required \$14,400 bid bond amount, the agency reasonably rejected the protester's bid bond and bid.

The protest is denied.


Robert P. Murphy
Acting General Counsel