

**Matter of:** Harrison Realty Corporation

**File:** B-254461.2

**Date:** December 30, 1993

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Terry L. Voss, Esq., for the protester.  
Gwenn B. Nachman, Esq., Scott Lawson, Esq., and Lester Edelman, Esq., Department of the Army, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Contracting agency reasonably determined a bidder to be nonresponsible where the agency found that the bidder's individual sureties were unacceptable because their Affidavits of Individual Surety contained misrepresentations, which cast doubt as to the integrity of the sureties and the credibility of their representations.

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**DECISION**

Harrison Realty Corporation protests the rejection of its bid and the award of a contract to Ronald Adams Contractor, Inc. under invitation for bids (IFB) No. DACW29-93-B-0084, issued by the New Orleans District, Army Corps of Engineers, for the construction of a levee to provide hurricane protection along Lake Pontchartrain, Louisiana.

We deny the protest.

The IFB required bidders to provide a bid bond in an amount equal to 20 percent of their bid price. By bid opening on July 8, 1993, the Corps received six bids. Harrison Realty submitted the apparent low bid of \$2,339,818.77, with a bid bond guaranteed by two individual sureties, Thomas J. Axon and Barry Danels. The bid bond was accompanied by two Affidavits of Individual Surety, Standard Form (SF) 28, setting forth each surety's net worth.

Mr. Axon's SF-28 claimed a net worth of \$3,426,000. Mr. Axon represented in his affidavit that his net worth consisted of \$218,000 in equity in his personal residence located in Brooklyn, New York, of which he was the sole owner, with a fair market value of \$475,000, subject to a

\$257,000 mortgage, and \$3,475,000 in "various notes payable to surety over the next 48 months [and] equity in companies owned by surety [elsewhere identified in the affidavit]." Mr. Axon also stated in his affidavit that his liabilities, other than the aforementioned mortgage on the Brooklyn residence, totaled \$267,000.

Mr. Danels's SF-28 claimed a net worth of \$5,800,000, consisting of \$3,300,000 in equity in his personal residence located in Great Neck, New York, and in another property located in Richmond Hill, New York. The affidavit represented that both properties were solely owned by Mr. Danels, and that neither was subject to any mortgage or any other encumbrance. The SF-28 reflected an additional \$2,500,000 of claimed net worth consisting of "stocks and bonds," and no liabilities.

Neither surety provided the "certificates of title" and other related documentation, including the disclosure of any encumbrances or liens, required by Federal Acquisition Regulation (FAR) § 28.203-3 to be submitted with the SF-28 to support pledges of real property. Each surety's certificate of sufficiency was signed by a Senior Business Officer of the Marine Midland Bank.

The contracting officer reviewed and researched the information contained in the affidavits, and determined, among other things, that each affidavit contained significant misrepresentations and that each surety had pledged assets which could not be accepted by the agency.

Specifically, with regard to the Brooklyn property claimed as an asset by Mr. Axon, the contracting officer obtained records which showed that, contrary to Mr. Axon's representation, the property was in fact owned by an individual other than Mr. Axon. The contracting officer further determined that, even if Mr. Axon were the sole owner of the Brooklyn property, such property could not be pledged because FAR § 28.203-2(c)(3)(ii) provides that "[r]eal property which is a principal residence of the surety" cannot be accepted. The contracting officer also researched the companies in which Mr. Axon claimed to have \$3,475,000 in equity and found that, although not disclosed by Mr. Axon, each company was in fact an affiliate of Harrison Realty, and as such, the pledged equity was unacceptable. FAR § 28.203-2(c)(5).

The contracting officer also researched the Great Neck and Richmond Hill properties pledged by Mr. Danels, which were represented in his affidavit as "solely-owned" real estate, and found that, contrary to Mr. Danels's representations, the Richmond Hill property was solely owned by an individual other than Mr. Danels, and the Great Neck

property was jointly owned by Mr. Danels and another individual. The contracting officer also found that as of 1986, the Great Neck property was subject to a mortgage of \$1,050,000, and that in any event, it appeared that the property could not be accepted as collateral because the property was the surety's personal residence. See FAR § 28.203-2(c)(3)(iii).

Based on the affidavits and the other available information, the contracting officer concluded that significant questions concerning the integrity and credibility of Mr. Axon and Mr. Danels had been raised so as to render these individuals unacceptable as sureties. The agency rejected these sureties without seeking further information from Harrison Realty or the sureties, and made award to Ronald Adams. This protest followed.

The protester concedes Mr. Axon's unacceptability as an individual surety for this procurement, and in doing so, makes no attempt to refute the agency's determinations that Mr. Axon misrepresented himself as the sole owner of the Brooklyn property and failed to disclose that the companies in which Mr. Axon claims \$3,475,000 in equity are Harrison Realty's affiliates. Nor does the protester make any attempt to refute the agency's determinations that Mr. Danels also misrepresented himself as the sole owner of the Great Neck and Richmond Hill property.

The protester argues, however, that the agency should not have rejected Mr. Danels as an individual surety without seeking further information or considering the rest of the pledged assets. The protester contends that Mr. Danels, by virtue of his claimed \$2,500,000 in stocks and bonds, has sufficient assets to cover the \$468,000 penal amount of the bond. In this regard, for the first time in its comments on the agency report, the protester states that Mr. Danels has established an account with Citizens Banking Company of Salineville, Ohio, which, according to the Citizens Banking Company, holds "\$470,000 of U.S. Government securities [pledged] in favor of the U.S. Army Corps of Engineers" to satisfy Harrison Realty's bid bond obligations under this IFB.

The SF-28 and related supporting documentation, such as the certificates of title and pledges of assets, serve solely as an aid in determining the responsibility of an individual surety. FAR § 28.203(c); Burtch Constr., B-240695; B-240696, Nov. 23, 1990, 90-2 CPD ¶ 423; E.C. Dev., Inc., B-231523, Sept. 26, 1988, 88-2 CPD ¶ 285. Consequently, uncertainties or defects in these documents do not ordinarily warrant the automatic rejection of a bidder. Norse, Inc., B-233534, Mar. 22, 1989, 89-1 CPD ¶ 293. This is so because information bearing on responsibility may

generally be provided at any time prior to award. Burtch Constr., supra. However, a contracting officer may reject a bidder as nonresponsible for having unacceptable sureties, without further inquiry, where there is doubt as to the integrity of the sureties and the credibility of their representations. Gene Quigley, Jr., 70 Comp. Gen. 273 (1991), 91-1 CPD ¶ 182; Seaworks, Inc., B-226631.2, Dec. 22, 1989, 89-2 CPD ¶ 581. Contracting officers are vested with a wide degree of discretion and business judgment when making a determination as to the acceptability of individual sureties; we will not object to a determination that an individual surety is unacceptable unless it was made in bad faith or is without a reasonable basis. Allied Prod. Mgmt. Co., Inc., B-237126 et al., Dec. 22, 1989, 89-2 CPD ¶ 587.

Here, the protester has not shown that the agency acted unreasonably in rejecting the individual sureties as unacceptable without further inquiry. The protester has conceded Mr. Axon's unacceptability as a surety and the record evidences that the rejection of Mr. Danels as a surety, without soliciting further information, was reasonable. The fact that Mr. Danels misrepresented himself as the sole owner of the Great Neck and Richmond Hill properties, when in fact one property is jointly held and the other is held by another individual, certainly casts doubt on the surety's integrity and credibility. Because the protester has not stated or argued at any time that these misrepresentations were the result of either an oversight or misunderstanding, the record provides no support for the conclusion that the misrepresentations were other than deliberate. Similarly, the protester has not stated or argued that the \$1,050,000 mortgage on the Great Neck property no longer exists, or, in the alternative, that the failure to disclose the mortgage on the SF-28 was an oversight. In sum, it was reasonable for the contracting officer to reject Mr. Danels as an individual surety without seeking further information from the protester because of the gravity of Mr. Danels's misrepresentations, which cast legitimate doubt on the integrity of the surety and raised serious questions concerning his credibility. Gene Quigley, Jr., supra; Management Servs. Group, Inc., B-237363, Feb. 20, 1990, 90-1 CPD ¶ 294; Seaworks, Inc., supra.

We also reject the protester's assertion that the agency acted unreasonably in rejecting Mr. Danels as an individual surety because of Mr. Danels's claimed \$2,500,000 in "stocks and bonds," as evidenced in part by his account with The Citizens Banking Company, or without ascertaining if that

surety had other sufficient assets that could be pledged.<sup>1</sup> Where, as here, the accuracy of a surety's representations reasonably have been called into question, the agency is justified in rejecting the surety, notwithstanding the adequacy of the surety's other assets. Allied Prod. Mgmt. Co., Inc., supra; Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD ¶ 218. This reflects the great reliance an agency is entitled to place on the accuracy, thoroughness, and verity of surety financial information provided for government procurements. Allied Prod. Mgmt. Co., Inc., supra; see Farinha Enters., Inc., 68 Comp. Gen 666 (1989), 90-1 CPD ¶ 262. Based on the record here, the contracting officer was justified in rejecting Harrison Realty's sureties and thus rejecting that firm as nonresponsible.

The protest is denied.

James F. Hinchman  
General Counsel

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<sup>1</sup>The specific stocks and bonds allegedly pledged by Mr. Danels were not identified by the protester in either its bid or during the course of this protest.