



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-228200.3

March 2, 1989

The Honorable Ted Stevens
United States Senate

Dear Senator Stevens:

This responds to your January 16, 1989, letter regarding our decision in Altex Enterprises, Inc., B-228200, Jan. 6, 1988, 67 Comp. Gen. (1988), 88-1 CPD ¶ 7. It is your understanding that we reversed the Department of the Army's determination that Altex was nonresponsible based on the failure of its sureties to grant the agency a security interest in real property. You state that several Alaskan subcontractors have not been paid by Altex for work performed under the awarded contract and that Altex's sureties cannot be located. In light of what has occurred, you question the decision to award to Altex. You ask for the background of our decision and the guidelines used to approve sureties on government contracts.

Altex, a small business, protested the rejection of its bid based on a solicitation provision which required that individual sureties provide a security interest, such as an unencumbered mortgage, proof of title and an appraisal of property value. Altex asserted that these requirements were unduly restrictive of competition because they limited the use of individual sureties for bid and performance bonds in government contracts. In our decision, copy enclosed, we agreed with Altex that these requirements imposed upon individual sureties were so burdensome as to constitute a prohibition against individual sureties and, as such, would violate Federal Acquisition Regulation provisions permitting use of individual sureties. We sustained Altex's protest that these solicitation requirements were unduly restrictive of competition and directed the contracting officer to reassess the responsibility of Altex's individual sureties in light of our decision. Our decision advised that the contracting officer should reevaluate Altex's responsibility without consideration of the additional requirements and make an award to Altex if the agency otherwise found Altex responsible.

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Apparently, after examination of the financial responsibility and integrity of Altex's sureties, the contracting officer found reason to conclude that these sureties were acceptable. It is the responsibility of the agency to assure that both the prospective contractor and its sureties are responsible and capable of meeting their financial commitments. Our Office does not determine the responsibility of sureties. However, our Office will consider the reasonableness of an agency's determination of surety responsibility pursuant to a protest. After the Army determined Altex and its sureties responsible, there was no protest to our Office concerning those determinations.

We note that the federal government has proposed new rules, copy enclosed, concerning the use of individual sureties. These rules are based on a recognition that the current Federal Acquisition Regulation governing the use of individual sureties are inadequate to ensure that the interests of the government and suppliers under government contracts which require a payment bond are protected. The proposed rules would require a sufficient pledge of specific assets equal to the penal bond amount. Also, real estate pledges would have to be supported by a covenant not to convey and certain other documentation. Finally, other assets pledged would have to be placed in an escrow account.

We trust this information is helpful.

Sincerely yours,


James F. Hinchman
General Counsel

Enclosures