



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: D.M. Potts Corporation  
File: B-231855  
Date: November 4, 1988

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### DIGEST

Agency rejection of bid because tax appraised value of real estate listed by sureties was not adequate to support required bid guarantee is improper where agency's subsequent appraisal of one property shows that fair market value of property is substantially higher than the tax appraised value and record indicates that fair market value of sureties' property is more than adequate to cover price difference between protester's bid and next low bid, which is considered adequate security under applicable Federal Acquisition Regulation provision.

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### DECISION

D.M. Potts Corporation protests the rejection of its bid under invitation for bids (IFB) No. N62470-86-B-4988, for grounds maintenance at the Naval Weapons Station, Yorktown, Virginia. Award was made to Mark Dunning Industries, Inc., but performance was suspended before work commenced. The protester challenges the agency's determination of its nonresponsibility based upon the inadequacy of its individual bid bond sureties' net worth.

We sustain the protest.

Potts submitted the second low bid out of eight bids submitted in response to the solicitation. The apparent low bid at bid opening was rejected as nonresponsive and Pott's bid of \$521,125.00 became the apparent low bid. The next low bid was in the amount of \$569,124.86.

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The solicitation required a bid guarantee of 20 percent of the bid price and Potts submitted a bid bond listing two individual sureties, Marcelle G. Myers and Ben Butler, Jr.<sup>1/</sup> Both sureties indicated a net worth including real estate properties substantially above the amount required as a bid guarantee.<sup>2/</sup> The contracting officer did not accept at face value the validity of the sureties' affidavits concerning the fair value of the properties listed as assets. To verify the value of these properties located in Camden County, Georgia, the contracting specialist contacted the Camden County Board of Assessors, which reported that according to the official 1987 Tax Digest, Mr. Myers' and Mr. Butler's real estate had an assessed value substantially below the value contained in the surety affidavits.<sup>3/</sup> Based on the tax values, the contracting officer concluded that the net worths of both sureties were inadequate to cover the 20 percent penal bond requirement and rejected Potts' bid. Potts was informed of the rejection of its bid by letter of June 27. This protest followed.

The adequacy of a surety's net worth is a matter of responsibility which may be established any time before contract award. Consolidated Services, Inc., B-206413.3, Feb. 28, 1983, 83-1 CPD ¶ 182. Since such a determination involves the exercise of subjective business judgments we will not disturb it unless it is shown to be unreasonable. See CWC Inc., B-209383, Oct. 19, 1982, 82-1 CPD ¶ 347. In Eastern Maintenance Services, Inc., B-220395, Feb. 3, 1986, 86-1 CPD ¶ 117, which the Navy cites, we did hold reasonable the contracting officer's sole reliance upon tax value of real estate for purposes of computing net worth, but the

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<sup>1/</sup> Federal Acquisition Regulation (FAR) § 28.202-2 (FAC 84-12) requires that two individual sureties must execute the bond, each of whom must have a net worth equal to the penal sum of the bond.

<sup>2/</sup> Mr. Myers indicated a net worth of \$922,330 on his affidavit of individual surety (Standard Form 28); Mr. Butler indicated a net worth of \$3,003,820 and outstanding surety obligations of approximately \$1,762,987. Mr. Myers' surety affidavit listed realty which he claims has a fair value of \$922,330 for taxation purposes. Mr. Butler states an amount of \$3,043,820 as the fair value of his realty.

<sup>3/</sup> The tax assessed value was approximately 10 percent of the stated value of the property of each surety.

circumstances were very different than those present here. The surety in that case failed to provide adequate information regarding the location and value of its holdings in its affidavit, and failed to supply the necessary information for the contracting officer to determine his net worth after having been requested to do so. The only information concerning the property values which the contracting officer had available to him was the tax assessment information. Under those circumstances, we thought it was reasonable for the contracting officer to have relied on the tax value of the real estate to determine the surety's net worth.

Here, we conclude that the contracting officer's reliance on the tax value was unreasonable. Presented with the significant unexplained disparity between the tax assessed value in the tax digest and the values claimed by the sureties, the contracting officer simply chose to assume the property values listed in the affidavits were incorrect and rejected Pott's bid. The contracting officer made no attempt to reconcile the disparity, such as by asking for further information from the sureties or from the tax assessors office. We think the contracting officer was required to make such an attempt since tax values and fair market values often are not the same for real estate parcels, and here the contracting officer was faced with one year old tax values, which may well have not equated to present fair value.<sup>4/</sup>

We note in this connection that the record contains a letter supplied by the protester from the Chief Tax Appraiser of Camden County, the area in which the properties at issue are located. The official indicates that "[w]ith the population and building boom going on in Camden County due largely from Kings Bay Naval Facility, prices of real estate are changing daily, and mostly upward, so the . . . Myers and . . . Butler [properties] could be worth much more than what is on the Tax Digest." Further, in response to the protest, the Navy appraised the 17 acres listed by Mr. Myers and determined that the property has a substantially higher value than the tax assessed value. Accordingly, we find that the contracting officer improperly rejected Potts' bid.

Although generally sureties must establish financial resources sufficient to meet the penal bond requirement, and noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, the requirement may be waived in certain circumstances. FAR § 28.101-4

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<sup>4/</sup> The surety affidavit form requires sureties to state the "fair value" of real estate owned, not the tax value of the property.

(FAC 84-12). The FAR specifically provides that a bid guarantee covering the difference between the low and next low bid is considered adequate security. We think the record reasonably shows that both sureties have assets adequate to cover the difference in bids, here \$48,000.

With regard to Mr. Myers' net worth, the contracting officer initially found his net worth to be \$1,300. Mr. Myers' affidavit listed 17 acres of a 51-acre tract. The entire 51-acre tract had been assessed by Camden County for tax purposes at \$59,921. The Navy now indicates that it has appraised the 17 acres and finds the value to be \$225,000. Thus, the agency's own appraisal for the 17 acres indicates that Mr. Myers clearly has more than sufficient assets to provide adequate security.

With regard to the second surety, Ben Butler, the Navy admits that Mr. Butler has an available net worth of \$40,000. The Navy found that Mr. Butler's real estate had a tax value of \$284,104. Since Mr. Butler's real estate is situated in the same county in Georgia as the property listed by Mr. Myers, it is reasonable to assume, based on the Navy's appraisal of Mr. Myers' property, that the recorded tax value of Mr. Butler's property similarly does not represent the property's full fair market value and the agency has not presented any evidence to indicate otherwise. Thus, we find it reasonable to conclude that Mr. Butler's net worth is substantially higher than the \$40,000 asserted by the Navy, and is sufficient to meet the \$48,000 difference in price between the low bid and the next low bid.<sup>5/</sup> See FAR § 28.101-4.

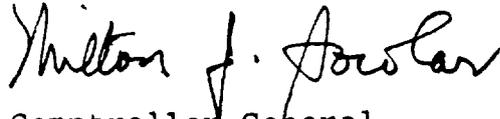
Accordingly, the record shows that both sureties have sufficient assets to provide adequate security. See Transcontinental Enterprises, B-225802, supra. By letter of

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<sup>5/</sup> The Navy has been provided an opportunity to rebut the significance of the Navy's recent fair market value appraisal and has failed to do so.

today to the Secretary of the Navy, we are recommending that the Navy terminate for the convenience of the government Dunning's contract and make award to Potts. In addition, we find Potts entitled to recover the costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General  
of the United States