

Protest of )  
 ) Date: October 23, 1987  
 PORTER CONTRACTING CO, INC. )  
 )  
 Solicitation No. 239986-87-A-0030 ) P.S. Protest No. 87-82

### DECISION

Porter Contracting Company, Inc. (Porter), timely protests award of a contract to Darwin Construction Company (Darwin) under Invitation For Bids (IFB) No. 239986-87-A-0030.<sup>1/</sup>

IFB No. 239986-87-A-0030, issued May 5, 1987, by the Facilities Service Office, Columbia, MD, sought bids for the acquisition and installation of two dock elevators, the demolition of three firing ranges, and construction of storage space at the Merrifield, VA, Management Sectional Center. When bids were opened July 15, Darwin's bid Contrary of \$434,000 was the lowest of eight bids received. Porter's bid was second low at \$456,000. The solicitation required that bids be accompanied by a bid bond in the amount of 20% of the total bid, or, in Darwin's case, \$86,000. Darwin provided the individual bonds of Lester J. Robinson and Joan B. Robinson.<sup>1/</sup> Each bond was accompanied by evidence that each surety's net equity was well in excess of \$86,000.

Porter argues that Darwin should be found non-responsible because Darwin's bid bond was from two individual sureties rather than a corporate surety; its individual sureties failed to disclose other bonds on which each was acting as a surety in their affidavits of financial worth; and a trade industry publication, the Dodge Bulletin, showed Darwin to be the apparent low or second low bidder on approximately 50 to 70 projects.<sup>1/</sup> In

<sup>1/</sup> Porter's protest letter was addressed to the General Accounting Office (GAO) which forwarded the protest to the Postal Service since GAO lacks jurisdiction to consider protests arising out of postal contracting practices. See Postal Contracting Manual (PCM) 2-407.8 a; Falcon Systems, Inc. -- Request for Reconsideration, Comp. Gen. Dec. B-222549.2, June 5, 1986, 86-1 CPD & 526.

<sup>2/</sup> The Robinsons, who are husband and wife, are also the President and Corporate Treasurer of Darwin. We note that Postal Service regulations do not prohibit officials of a corporation from serving as the corporation's sureties. Additionally, our examination of Darwin's bid bond reveals that the sureties certified that the assets, liabilities and net worth listed in the affidavits did not include any financial interest in the assets of Darwin.

<sup>3/</sup> Porter's protest is based on Federal Acquisition Regulations and Comptroller General decisions. The Postal Contracting Manual is the source of regulatory guidance for the Postal Service, and other government procurement regulations are not binding on the Postal Service. See Jarke Corporation, P.S.

support of its allegations concerning other bonds, Porter has furnished two bid bonds executed by the Robinsons in September, 1986.

In his report to this office, the contracting officer asserts that Postal Contracting Manual (PCM) 10-203, "Individual Sureties," allows the use of two individual sureties each of whose net worth must not be less than the penal amount of the bond. He concludes that that test has been met. The contracting officer contends that in pursuing allegations made by Porter, his office did not uncover evidence that individual sureties failed to disclose bid bond information.

### Discussion

Although Porter characterizes it as a matter of responsibility, whether a bid bond is sufficient is generally a matter of bid responsiveness. Design Engineers, Comp. Gen. Dec. B-214658, April 10, 1984, 84-1 CPD & 408. The determination as to whether a bid bond is acceptable must be based solely on the bid documents themselves as they appear at bid opening. Hydro-Dredge Corp., Comp. Gen. Dec. B-214408, April 9, 1984, 84-1 CPD & 400.

to Porter's assertion, the contracting regulations applicable to this procurement allow the provision of bid bonds by individual sureties. The contracting officer determined that the bid bond was adequate because the individual sureties' net worths were far in excess of the penal amount required. The sufficiency of a bid bond is measured by determining whether the Postal Service could enforce the bond against the surety in the event that the bidder "failed to go forward with the faithful performance of his obligation." Mil-Pak Company, Inc., P.S. Protest No. 79-10, May 23, 1979, on reconsideration, July 13, 1979; Keehn Brothers, Incorporated, P.S. Protest No. 87-10, April 3, 1987. The bonds furnished in this instance meet that test.

Porter has presented no evidence of unreported outstanding bond obligations to support its claims that the sureties failed to disclose other bid bond obligations. There is no evidence that the September 1986 bid bonds signed by Darwin's sureties which Porter provided remain outstanding, and the nature of a bid guarantee would suggest the contrary.<sup>4/</sup> Porter's allegations that Darwin has been low or second low bidder on 50 to 70 projects in the two months preceding its protest, even if true, provides no support for its position because there is no evidence that bonds have been required on these projects or, if required, that these sureties provided them.

The protester bears the burden of affirmatively proving its case. Compucom Security, P.S. Protest No. 86-20, May 9, 1986; Liberty Carton Company, P.S. Protest No. 85-35, July 30, 1985. Porter has failed to proffer evidence of alleged improprieties as to this

Protest No. 87-33, May 20, 1987; Lubecon Maintenance Systems, Inc., P.S. Protest No. 84-78, December 17, 1984; PCM 1-112. Decisions of the Comptroller General are not binding on the Postal Service but "the reasoning of such decisions will be adopted unless it is clearly inapplicable." Erickson Textile Co., P.S. Protest No. 81 -35, September 25, 1981.

<sup>4/</sup> The purpose of a bid guarantee is to protect the Postal Service from loss in the event of contractor default in the period between contract award and the Postal Service's receipt of the payment and performance bonds required by the contract. See PCM 10-103.2 and the text of the bid bond, PS Form 7324.

solicitation. Moreover, the contracting officer's investigation uncovered no evidence of impropriety. Because Porter has failed to support its allegations, we will not overturn the contracting officer's acceptance of Darwin's bid.<sup>4/</sup>

The protest is denied.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 3/12/93]**

<sup>5/</sup> Porter cites Comptroller General decisions holding that a continuing pattern of a bidder's individual sureties failing to reveal their outstanding bond obligations on their affidavit of financial worth supporting the bid bond is sufficient to find the bidder non-responsible. In each of the cases cited the contracting officer discovered bond obligations other than any listed in the affidavit of individual surety and a pattern on the part of the sureties of omitting outstanding bond obligations on their affidavits. These cases are not applicable where the protester has failed to establish any failure to report outstanding obligations, much less a pattern of such activity.