



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jay Jackson & Associates

File: B-271236.3

Date: September 10, 1996

Jay R. Jackson for the protester.
Lila Hamblin, Department of Agriculture, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where bidder failed, after being given repeated opportunities, to furnish documentation which adequately supported the acceptability of proposed individual surety, the agency reasonably found the surety unacceptable and properly rejected the bid.

DECISION

Jay Jackson & Associates (JJA) protests the rejection of its bid and the award of a contract to Harvest Construction Company under invitation for bids (IFB) No. R3-12-96-04, issued by the Department of Agriculture for the construction of a road at Simpson Lake. JJA asserts that its bid was improperly rejected on the basis that its proposed individual bid bond surety was unacceptable.¹

We deny the protest.

¹We previously dismissed JJA's protest for failure to file comments on the agency report, or request an extension within 14 calendar days after receipt of the report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(h) (1996). While we had received a letter from the protester dated after the report due date, it appeared to seek only general guidance regarding the use of individual sureties and did not directly address the material presented in the agency report. The protester subsequently explained that it had intended the May 6 letter to constitute its comments on the report. Under these circumstances, we will consider the merits of the protest.

The IFB required that bidders submit a bid bond in an amount equal to 20 percent of the bid price. Bids were opened on December 14, 1995. The low bid submitted by Schuck Development Company was rejected as nonresponsive. JJA, the second low bidder, submitted a bid bond in the amount of \$61,750 executed by an individual surety, Jason Jackson. As required, the bid contained a completed Affidavit of Individual Surety (Standard Form (SF) 28) on which the surety listed as assets pledged to the government in support of the bond a "lien on real estate," which was described as "lode mining claims." Also included was a report from Land Title Company of Grant County which listed various encumbrances, judgments and state, federal, and city tax liens, which were attached to the property.

In reviewing the documents attached to Mr. Jackson's SF 28, the contracting officer questioned, among other things, whether the asset pledged, entitled The Dixie Meadow Group Mining Claims, was speculative and unacceptable, the failure of JJA to provide evidence of title in the form of a certificate of title prepared by a title insurance company approved by the Department of Justice, the lack of evidence of the amounts due under the listed encumbrances and liens, and the failure to provide a current real estate tax assessment of the property or a current appraisal by a professional appraiser. The protester was notified of these deficiencies in a letter which it received on January 26, 1996, and was requested to provide corrections within 5 days after receipt. The protester was also advised that assets could be substituted, but that he could not provide a substitute surety.

Rather than attempting to remedy the deficiencies, on February 5, the protester requested that the bid bond requirement be waived in return for its promise to provide corporate payment and performance bonds after the contract was awarded. The protester was advised that noncompliance with the bid bond requirement of the IFB could not be waived.

Thereupon, in an attempt to correct the deficiencies, the protester provided various individual releases, property tax records, and more preliminary reports and lot book service reports from Land Title Company of Grant County, Ticor Title, and Chicago Title (a company approved by the Department of Justice). The information on these reports was substantially the same as that which had been previously provided, and the reports did not show the release of all of the numerous liens and encumbrances.

The protester was notified by letter dated February 8, that its bid bond was unacceptable. Thereupon, the protester submitted additional evidence of title from Chicago Title. After reviewing this new information and determining that it did not contain any new acceptable evidence of sufficiency of pledged assets, the contracting officer again determined that JJA's bid was unacceptable.

JJA asserts that its bid bond should be deemed acceptable because the property pledged has an assessed value that exceeds that required for a bid bond and because it believes that any other problems were "manageable." However, the protester does not specifically address the various defects identified by the agency.

The contracting officer is vested with a wide degree of discretion and business judgment in determining the acceptability of an individual surety, and we will not question such a determination so long as it is reasonable. Santurce Constr. Corp., 70 Comp. Gen. 133 (1990), 90-2 CPD ¶ 469. It is the surety's obligation to provide the contracting officer with sufficient information to clearly establish the surety's acceptability. Southern California Eng'g Co., Inc., 69 Comp. Gen. 387 (1990), 90-1 CPD ¶ 365. Nevertheless, agencies may not automatically reject a bidder for unacceptable individual sureties because the SF 28 and supporting documentation contain minor defects that might easily be remedied. Gene Quigley, Jr., 70 Comp. Gen. 273 (1991), 91-1 CPD ¶ 182. Since these matters concern bidder responsibility, absent any evidence that sureties lacked integrity or credibility, the agency should give the bidder the opportunity to have its sureties provide satisfactory explanations or pledge sufficient and acceptable assets. Id. The procuring agency, however, is not required to indefinitely delay an award to allow a bidder to show that its surety is responsible. Id.

Here, the agency afforded JJA ample opportunity to establish the acceptability of its individual surety, but the information furnished by JJA failed to do so. As discussed above, the contracting officer found numerous deficiencies in the documents supporting JJA's individual surety; the key deficiency involved the acceptability of the asset pledged in support of the bid bond, which at all times was identified by legal description as a "perfected lode mining claim" (a portion of which extended into National Forest Land), an asset which the contracting officer determined was speculative in nature. The record shows that in this regard, during a February 2 discussion between the contracting officer and the title officer of the original title company involved, Land Title Company of Grant County, the contracting officer was advised that the surety, Jason Jackson, had sold the real property in late December 1995 to another party, and in its various communications with the agency, the protester never identified the property as anything other than a mining claim. Federal Acquisition Regulation (FAR) § 28.203-2(c) provides that unacceptable assets for purposes of bid bonds include speculative assets such as mineral rights. In its comments to our Office, the protester states that the property pledged also has value based on cattle grazing and merchantable timber rights, but provides no substantiation for having any such interests and never claimed these

interests in its communications with the agency. Accordingly, we think the contracting officer properly considered the pledged asset to be speculative and unacceptable, and therefore properly rejected JJA's bid.

The protest is denied.

Comptroller General
of the United States