



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Danish Arctic Contractors

File: B-225807

Date: June 12, 1987

DIGEST

Where factual question arises as to the identity of the surety's agent who signed bond because notarized certification attached to bond does not indicate full name of surety's agent, but evidence in existence prior to bid opening is available in agency's contracting file to establish that signatory to bond is proper agent of surety, bid should not be rejected as nonresponsive.

DECISION

Danish Arctic Contractors (DAC) protests the rejection of its bid under invitation for bids (IFB) No. DACA51-87-B-0018, issued by the Army Corps of Engineers, and the Corps' subsequent award of the contract to Danish Construction Corporation (DCC).

We sustain the protest.

The solicitation is for the construction of officer personnel housing at Sonderstrom Air Force Base in Greenland. The IFB required each bidder to submit with its bid a bid bond and advised that failure to furnish a bid guarantee in the proper form and amount by the time set for bid opening might cause the rejection of the bid.

Bids were opened on February 12, 1987, in both Copenhagen, Denmark, and at the Corps' New York District Office in New York City. Two bids were submitted. DAC submitted the apparent low bid of 51,090,275 Danish kroners and DCC bid 51,536,500 Danish kroners. DAC's bond contained, as

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corporate agents of the surety, the signatures of "Bjarne Sorenson" and "Kim Larsen." However, the attached certification from the Notary Public of Copenhagen stated as follows:

"This is to certify that Messrs.

VILLY SORENSEN and KIM LARSEN,

who on this day in my presence have acknowledged their signatures on this document, according to the Register of Insurance Companies are entitled to sign jointly per procuration on behalf of the company 'Dansk Kautionsforsikrings - Aktieselskab.'"

No other evidence was submitted with DAC's bid to show Bjarne Sorensen was authorized to bind the surety. The record indicates that this discrepancy was pointed out to the DAC representatives and DAC was asked to submit a proper power of attorney by February 13. By letter of February 13, DAC submitted an additional certification stating that the name of the person who had signed the Bid Bond Form was "Bjarne Villy Sorensen."

The Corps concluded that the bid was nonresponsive due to the lack of evidence at the time of bid opening that one of the parties signing the bid bond on behalf of the surety was authorized to sign. On March 2, the contract was awarded to DCC and the Corps orally notified DAC's attorneys of the rejection of DAC's bid as nonresponsive for failure to include a proper power of attorney. By letter to DAC of March 5, the Corps confirmed its action in writing. On March 9, DAC protested the rejection of its bid. Contract performance has been suspended pending resolution of DAC's protest.

DAC argues that the firm's bid bond was responsive on its face. DAC argues that, in any event, it would have been proper for the Corps to consider extrinsic evidence to establish the authority of the surety's representative. DAC states that there was information "readily and publicly available" to establish the identity of Mr. Sorensen and his authority to sign DAC's bid bond. DAC points out that the Corps' own prior contract records contain bid bonds which show Bjarne Villy Sorensen's authorized signature on behalf of Dansk.

We agree with the protester. Our Office previously has allowed use of extrinsic evidence to resolve ambiguities in the identity of a bidder, see Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 C.P.D. ¶ 98; Jack B. Imperiale Fence Co. Inc., B-203261, Oct. 26, 1981, 81-2 C.P.D. ¶ 339, or

to resolve ambiguities in the identity of the surety. See Las Piedras Construction Corp., B-208555.2, Dec. 27, 1982, 82-2 C.P.D. ¶ 579. We find no reason to follow a different rule to resolve an ambiguity in the identity of the surety's agent.

In rejecting DAC's bid, the Corps cites three decisions in support of its view that only documents submitted at bid opening may be considered in determining whether the individual signing the bond has the authority to bind the surety. See Baldi Brothers Constructors, B-224843, Oct. 9, 1986, 86-2 C.P.D. ¶ 418; Nova Group, Inc., B-220626, Jan. 23, 1986, 86-1 C.P.D. ¶ 80, and Langaker Marine, Inc., B-220556, Dec. 3, 1985, 85-2 C.P.D. ¶ 623. In these cases, the individual who signed the bond was not listed on the power of attorney forms attached to the bond and there was no evidence other than the post-bid opening statement of the surety itself to establish the authority of the individual to bind the surety. In Langaker Marine, Inc., the individual in question had been designated as an attorney-in-fact for the surety on a prior procurement conducted by the same agency but there was no evidence indicating that the individual was still an authorized agent of the surety at the time of the bidding.

Here, of course, the question is whether the individual signing the bond is the same individual identified by the surety's certification even though the first name is different. Clearly the contracting officer should not be required to search for evidence of identity which is not readily available or to consider evidence which comes into existence after the bid opening. See Nova Group Inc., B-220626, supra. However, we see no reason why the agency should not consider evidence of the identity of the surety's agent which was reasonably available to the agency prior to bid opening. See General Ship & Engine Works, Inc., 55 Comp. Gen. 422 (1975), 75-2 C.P.D. ¶ 269.

In this regard, the Corps was put on notice shortly after bid opening by DAC that the signer of the bond was the same individual identified in the accompanying certification. While this assertion by DAC itself could not be conclusive, we think it should have led the Corps to see if the assertion was verifiable by information in its possession or otherwise publicly available. In this regard, the record indicates that on three prior bid bonds DAC filed with the Corps' New York District office in 1986, Bjarne Sorensen was one of two individuals signing the bond, and was identified in the accompanying certification as "Mr. Bjarne Villy Sorensen." Given the Corps' apparent acceptance of these bonds, we think the Corps' own files reasonably put the Corps on notice that Bjarne Sorensen and Bjarne Villy Sorensen were the same person who was authorized to sign on behalf of the surety, and that

the Villy Sorensen identified in this certification most likely was the same Bjarne Sorensen who signed the bond. In such circumstances, we think any doubt regarding the identity of the person signing the bond properly could be resolved through further verification from any publicly available documents in existence prior to bid opening. Because the Corps did not do this, but simply rejected DAC's bid, we sustain the protest.

The Corps has not issued a notice to proceed to DCC. We therefore recommend that unless any remaining doubt regarding the identity and authority of the signer of the bond cannot be resolved, as indicated above, the Corps should terminate DCC's contract for the convenience of the government and award to DAC as the low, responsive bidder, if otherwise appropriate.

for *Harry R. Van Cleave*
Comptroller General
of the United States