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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Acceptability of Power of Attorney Authorization]

FILE: B-198915

DATE: July 1, 1980

MATTER OF: Department of Agriculture, Forest
Service--Advance Decision

DIGEST:

Surety's liability would extend to both payment bond and performance bond where surety's Power of Attorney states that attorney-in-fact, who signed bonds on behalf of surety, was authorized to bind surety by executing "bonds not exceeding" \$250,000. Since neither bond exceeded that amount, Power of Attorney may be accepted as evidence of attorney-in-fact's authority to execute each bond on behalf of surety even though Power of Attorney included only amount of performance bond.

Mr. Robert L. Stelter, Contracting Officer, Department of Agriculture, Forest Service, requests our views on whether a particular Power of Attorney is adequate evidence of authority of the signer of the payment and performance bonds associated with contract No. 50-82X9-0-065 with Wind Row, Inc.

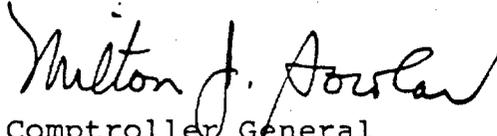
The contract is for certain construction at the contract price of \$222,180. The contractor submitted the required performance bond in the amount of \$222,180, and payment bond in the amount of \$111,090, reflecting that the surety for each bond was the Heritage Insurance Co. (Heritage). Mr. J. R. Miskin, attorney-in-fact, signed the forms on behalf of the surety and provided a copy of a Power of Attorney from Heritage, stating that he was authorized to execute "bonds" not exceeding \$250,000. The Power of Attorney was issued by Heritage on March 9, 1979. Prior to sending the Power of Attorney to the Forest Service, it appears that Mr. Miskin noted on copy No. 15432 of the Power of Attorney that the amount of the bond was \$222,180 and the effective date was April 10, 1980.

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The contracting officer questions whether that notation would limit the liability of Heritage to \$222,180, the amount of the performance bond. The contracting officer also notes that the total potential liability of Heritage is \$333,270, which may exceed the authority of Mr. Miskin as stated in the Power of Attorney.

In our view, the Heritage Power of Attorney dated March 9, 1979, empowered Mr. Miskin to execute "bonds" not exceeding \$250,000. Here, Mr. Miskin executed the two bonds and neither one exceeded \$250,000. Thus, we do not believe that Mr. Miskin exceeded his authority. Further, while copy No. 15432 relates to the performance bond, it may also be accepted as evidence of Mr. Miskin's authority to execute the payment bond. Cf. Accent General, Inc., B-192058, September 21, 1978, 78-2 CPD 215.

Although we believe that the Government's rights would be adequately protected on the basis of the existing documentation, we suggest that the contracting officer obtain another copy of the Power of Attorney with a notation specifically mentioning the amount of the payment bond. We also note that Mr. Miskin's authority to bind Heritage is limited to bonds having "80% and/or 90% indemnification" of the Small Business Administration. We suggest that the contracting officer obtain adequate assurance that this qualification is also satisfied.


Acting Comptroller General
of the United States