

25006

DECISION



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

FILE: B-209446.2

DATE: April 29, 1983

MATTER OF: Hancon Associates - Request for
Reconsideration

DIGEST:

prior decision holding that bid bond naming two different sureties was materially defective is reversed since under facts and circumstances it now appears that contingency feared--the intended surety's ability to avoid any obligation under the bond--is too remote in view of other indicia on or accompanying bond reasonably indicating that the surety would be bound.

Hancon Associates requests that we reconsider our decision in Atlas Contractors, Inc., B-209446, March 24, 1983, 83-1 CPD _____, sustaining Atlas' protest. In that decision, we held that Hancon's bid, for construction of a commissary at Carswell Air Force Base, Fort Worth, Texas, should be rejected as nonresponsive because the accompanying bid bond was materially defective. Hancon contends that the original protest by Atlas should have been dismissed as untimely and argues that our decision is legally incorrect. For the reasons that follow, we reverse our decision.

In deciding the merits of the protest, we held that the Hancon bid bond was fatally defective because it identified two different sureties. The bond listed Lumbermens Mutual Casualty Company in the place at the top of the bond form reserved for the designation of sureties. United States Fidelity and Guaranty Company (USF&G) was, however, listed as the surety at the bottom of the bond. Although Lumbermens' corporate seal was affixed to the bond and a power of attorney was submitted with the bond which designated Sheryl A. Klutts, among other persons, as Lumbermens' agent to "make, execute, seal, and deliver * * * any and all bonds * * *," we found that the discrepancy between the sureties listed at the top and the

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bottom of the bond created an ambiguity that was not clarified by the presence of the corporate seal and power of attorney.

Hancon maintains that it is clear from the bid bond that Lumbermens was the only party that could be bound as surety. Hancon relies on the presence of Lumbermens' corporate seal and the accompanying power of attorney designating Ms. Klutts as agent for Lumbermens.

We think there is merit to Hancon's argument. In our March 24 decision we stated that it was impossible to determine which of the two firms listed on the bid bond form was intended to act as surety. Upon reflection, however, we are persuaded that it is unreasonable to conclude that Ms. Klutts might have intended that USF&G act as the surety. Rather, it is sufficiently evident from the bond documents submitted with the bid that she intended Lumbermens to act as surety and that the listing of USF&G in the signature box of the bond was an obvious clerical mistake. In view of Lumbermens' corporate seal having been affixed and Lumbermens' power of attorney having been submitted, there is little question but that Lumbermens was the intended surety.

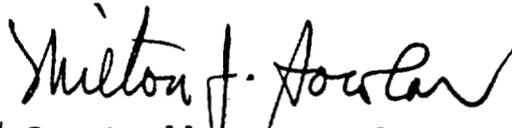
Under these circumstances, we think our prior decision gave too much weight to a technical deficiency in the bond and that the contingency about which we were concerned--the ability of the surety to rebut the seal and avoid any obligation under the bond--is too remote to warrant rejection of the bond. We therefore reverse our prior holding and agree that the contracting officer properly could have accepted the bid bond as submitted.

Since we originally agreed with Atlas that Hancon's bid bond was defective, we did not consider Atlas' other contention that the bond is defective because "it identifies the bidder as a Joint Venture but does not name the parties to the Joint Venture." In light of our decision here, however, it is necessary for us to address that contention.

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We believe Atlas' argument on this point is without merit. The legal entities shown on the bid form and on the bond are identical. The bid form identifies Hancon as a joint venture and the bond identifies Hancon as principal. Therefore, there is no question as to whether the surety would be bound if Hancon failed to execute the contract. Moreover, as Hancon correctly argues, there is no requirement that a bidder identify the parties to its joint venture on the bid bond.

The decision in Atlas is reversed.

for 
Comptroller General
of the United States