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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Dick Enterprises, Inc.--Protest and Reconsideration

**File:** B-259686.3

**Date:** November 16, 1995

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Martin Healy, Esq., Thompson & Waldron, for the protester.  
Julia L. Perry, Esq., Department of Transportation, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Where General Accounting Office (GAO) recommended in prior decision that awardee provide information to resolve ambiguity relating to the identity of the offering concern, and information provided resolves ambiguity, GAO finds that original award decision was proper.

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## DECISION

Dick Enterprises, Inc. protests the actions of the Department of Transportation (DOT) in failing to terminate for the convenience of the government a contract awarded to The Walsh Group, Ltd. d/b/a Archer-Western Contractors, Ltd. under request for proposals (RFP) No. DTFH71-94-R-00006, issued by the Department of Transportation, Federal Highway Administration (DOT) for the construction of a tunnel and portal buildings at Cumberland Gap National Historic Park. Dick also requests reconsideration of our decision in Dick Enters., Inc., B-259686.2, June 21, 1995, 95-1 CPD ¶ 286, in which we sustained an earlier protest by Dick against the contract award to Walsh.

We deny the protest and the request for reconsideration.

In our first decision, we found that Walsh's proposal, submitted in the name of The Walsh Group, Ltd. d/b/a Archer-Western Contractors, Ltd., was unclear regarding which of numerous corporate entities identified in the proposal was the actual offeror, and because there was no information to show that the individual signing the offer had authority to execute contracts on behalf of the companies named. We specifically noted that d/b/a is generally employed where the same legal entity is merely using another name as its trade name. We found, however, that Walsh and Archer-Western were distinct corporations, that they were not necessarily liable for each other's obligations, and that there was no information to show, for example,

that Walsh was the actual offeror and was merely using Archer-Western as its trade name. We also found no evidence to show that there existed a distinct legal entity known as The Walsh Group d/b/a Archer-Western Contractors. Finally, we found that, because of these infirmities, there was doubt regarding the enforceability of the bid bond submitted with Walsh's bid.

We therefore sustained the protest and recommended that DOT expeditiously obtain information to establish the identity of the offering entity and the authority of the individual signing the offer to bind the firm; we further recommended that, if the information provided was inadequate, DOT terminate the contract awarded to Walsh for the convenience of the government, and make award to Dick if otherwise proper.

In response to our recommendation, the agency has obtained various documents from Walsh. This information includes copies of the articles of incorporation for The Walsh Group, Ltd. and Archer-Western Contractors, Ltd., as well as the minutes from the two companies' boards of directors' annual meetings and authenticated copies of various motions of the boards dated January 10, 1994. This information shows, among other things, that (as represented in the original protest record) Archer-Western is a subsidiary of The Walsh Group, and that The Walsh Group assumed all liabilities of Archer-Western prior to the original deadline for submission of offers.

As an initial matter, Dick argues in its reconsideration request that our original decision was erroneous in that it permitted Walsh to furnish information after award regarding the identity of the offeror and authority of the individual signing the offer to bind the concern. Since our decision was based on the fact that the record contained insufficient information concerning which of several named entities was the offeror, the appropriate remedy--notwithstanding that award had been made--was to determine whether there was information that the agency could have obtained that would sufficiently clarify the relationships between the various entities. This recommendation was consistent with previous decisions of our Office which, because of circumstances, necessarily rely on evidence furnished after award to determine whether the award was proper--for example, where the issue was whether an individual in fact had authority to bind a concern at the time of bid opening. Hutchinson Contracting, B-251974, May 18, 1993, 93-1 CPD ¶ 391; Schmidt Eng'g & Equip., Inc.; Defense Logistics Agency--Recon., 72 Comp. Gen. 262 (1993), 93-1 CPD ¶ 470. We therefore have no basis to disregard the post-award evidence furnished here, and the reconsideration is denied.

In its protest, Dick contends that the information furnished is still inadequate to establish the identity of the offeror. Dick maintains that the two concerns named in the Walsh offer, The Walsh Group, Ltd. and Archer-Western Contractors, Ltd., are discrete corporate entities and that DOT cannot be sure which of the two concerns

is in fact liable to perform the contract. Dick also contends that the fact that Archer-Western is a subsidiary of The Walsh Group is immaterial since the limitation of liability arising as a consequence of these two firms being separate corporations is what creates doubt concerning which firm bears contractual liability here.

The central concern in every case where there is doubt regarding which firm is the actual offeror is the risk that there will be no party that is bound to perform the obligations of the contract. Sunrise Int'l Group, Inc.; Eagle III Knoxville, Inc., B-252735; B-252735.2, July 27, 1993, 93-2 CPD ¶ 58. Within the context of this case, there was no evidence to show whether Walsh, Archer-Western, or both, were bound to perform the obligations of the contract. The evidence now before us demonstrates that The Walsh Group bears ultimate liability for performance of this contract. Among the materials submitted by the agency is a resolution of the board of directors of The Walsh Group dated January 10, 1994, approximately 2 weeks prior to submission of the offerors' technical proposals. This resolution, entitled Parent Company Obligations, provides

"Be it resolved that The Walsh Group, Ltd. the parent company of Archer-Western Contractors, Ltd., a wholly owned subsidiary of The Walsh Group, Ltd., accepts and assumes all contractual and other liabilities and obligations on behalf of Archer-Western Contractors, Ltd., regardless of how such obligations may arise."

In our view, this resolution provides the necessary legal connection between The Walsh Group and Archer-Western Contractors; The Walsh Group has agreed by the terms of the resolution to be liable for the contractual obligations of Archer-Western, and this agreement removes any limitation of liability arising as a consequence of the two concerns being separate corporations. Given that this resolution was executed before the submission of offers, we think the record now shows that, at the time of proposal submission, the two concerns could be viewed as essentially synonymous, and that The Walsh Group could properly be considered the offeror for purposes of this contract.<sup>1</sup>

The record also now shows conclusively that Matthew Walsh, the individual signing the Walsh submissions, had authority to bind both The Walsh Group, Ltd. and Archer-Western Contractors, Ltd. In this regard, the agency's submissions to our

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<sup>1</sup>We also noted in our first decision that Walsh's proposal had apparently been submitted in the name of a nonexistent legal entity, The Walsh Group, Ltd. d/b/a Archer-Western Contractors, Ltd. Given Walsh's assumption of Archer-Western's contractual liabilities, we think it unobjectionable that the firm used this name in identifying Walsh as the contractor ultimately liable for performance.

Office include two additional resolutions, one by the board of directors for The Walsh Group, Ltd., and one by the board of directors for Archer-Western Contractors, Ltd. Both of these resolutions are also dated January 10, 1994, approximately 2 weeks prior to the submission of Walsh's proposal. These resolutions provide, respectively, that Matthew Walsh, as president of each concern, is authorized to execute legal documents on behalf of each corporation.

Dick argues that our Office should not accept the agency's submissions because the agency presented the information in a piecemeal fashion. The agency made three submissions to our Office after the issuance of our decision on June 21, 1995; the first agency submission was dated July 6, the second August 14, and the third November 2. The Parent Company Obligations resolution (quoted above) was not furnished until November 2. Dick argues that the agency has taken an unreasonably long time to present the information, and maintains that DOT's actions were inconsistent with the recommendation in our earlier decision to "promptly" obtain the information.

While we agree with the protester that the agency's presentation of the evidence was protracted, we nonetheless conclude that consideration of it is consistent with our central aim of ultimately determining the legal propriety of contract awards. The protester has advanced no legitimate reason for us to disregard the information, and we will not recommend that DOT terminate Walsh's contract--as the protester urges is the proper remedy here--based solely on its piecemeal presentation of relevant information; while the agency's presentation introduced some delay in the resolution of this protest, the evidence now before us shows that DOT's award decision was unobjectionable for the reasons discussed above.

The protest and request for reconsideration are denied.

Comptroller General  
of the United States