



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Johnson Controls, Inc.

File: B-270036

Date: January 19, 1996

Douglas O. Smith, Esq., for the protester.

Jeffrey M. Denson, Esq., and Cynthia S. Guill, Esq., Department of the Navy, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly determined that the validity of a bid bond was uncertain, and the bid therefore nonresponsive, where the surety's power of attorney authorizing the named attorney-in-fact to sign the bid bond on the surety's behalf contained an undated certification that the power of attorney had not been revoked.

DECISION

Johnson Controls, Inc. protests the rejection of its bid under invitation for bids (IFB) No. N44255-94-B-7523, issued by the Department of the Navy for a direct digital control system for the Trident Training Facility, Naval Submarine Base, Bangor, Silverdale, Washington. Johnson protests that the Navy improperly rejected its bid as nonresponsive.

We deny the protest.

The Navy received eight bids at bid opening on August 29, 1995. Johnson submitted the apparent low bid of \$309,096. Along with its bid, Johnson submitted the required bid bond on a standard form 24, dated August 28 and signed by Janis M. Muccio, attorney-in-fact for the surety, Safeco Insurance Company of America. A power of attorney submitted with the bond authorized Ms. Muccio to act as attorney-in-fact for, and execute bonds on behalf of, Safeco. The power of attorney was signed by the president and secretary of Safeco and was dated February 12, 1993. The bottom half of the power of attorney constituted a certificate which, when completed, certified that the power of attorney remained in full force and effect as initially executed, and had not been revoked. This certificate was signed by the secretary of Safeco and Safeco's corporate seal was affixed next to this signature; however, the space for inserting the date of the certificate was blank.

The Navy concluded that, with an undated certificate, the surety could disclaim liability simply by stating that the power of attorney had been revoked prior to the execution of the bid bond. The Navy thus determined that the validity of the bid bond was uncertain and that Johnson's bid was nonresponsive. By letter of September 25, the Navy informed Johnson that it had rejected Johnson's bid and had awarded the contract to Christenson Electric for \$402,972. This protest followed.

Johnson alleges that the power of attorney was properly executed and that the certificate, although not dated, was signed by a corporate officer of the surety; thus, the surety was bound under the bond executed by its designated attorney-in-fact. Johnson concludes that the validity of the bid bond is certain and that its bid is responsive.

A bond is a written instrument executed by a principal party (*i.e.*, the bidder or contractor) and a second party surety to assure fulfillment of the principal's obligations to a third party (*i.e.*, the government). Federal Acquisition Regulation (FAR) § 28.001. A bid bond assures the surety's liability to the government for the excess cost of awarding to the next eligible bidder in the event that the awardee (*i.e.*, the principal) fails to fulfill its obligations. A.W. and Assocs., Inc., 69 Comp. Gen. 737 (1990), 90-2 CPD ¶ 254; Shackelford Mechanical, Inc., B-261948, Nov. 1, 1995, 95-2 CPD ¶ 203. When required by a solicitation, a bid bond is a material part of the bid and a valid bid bond must be furnished with the bid in order for it to be responsive. A.D. Roe Co., Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.

Where a bid bond is accompanied by a power of attorney that on its face does not establish unequivocally that the person signing on behalf of the surety has the authority to bind the surety, such a power of attorney creates doubt as to whether the surety is bound by the bid bond under the law of suretyship, and therefore renders the bid nonresponsive. A.W. and Assocs., Inc., *supra*; Shackelford Mechanical, Inc., *supra*. Where a power of attorney is dated in advance of a bid bond, there exists the possibility that the surety may have revoked the power of attorney prior to the execution of the bid bond. Shackelford Mechanical, Inc., *supra*; Quantum Constr., Inc., B-255049, Dec. 1, 1993, 93-2 CPD ¶ 304. Similarly, an undated certification attesting to the continuing validity of an aged power of attorney provides no reasonable assurance of the surety's recent affirmation of the validity of the power of attorney, such that the agency must consider the validity of

the bid bond uncertain and reject the corresponding bid as nonresponsive.¹ Shackelford Mechanical, Inc., supra (bid is nonresponsive because of undated certification on a 7-month-old power of attorney); Quantum Constr., Inc., supra (bid is nonresponsive because of an undated certification on 6-1/2-month-old power of attorney).

Here, the effective date of the power of attorney was 2-1/2 years prior to the bid bond date, and the surety did not date its certification affirming the validity of the power of attorney. Thus, the certificate possibly could have been signed up to 2-1/2 years prior to the execution of the bid bond, and reasonable doubt exists as to whether the surety may have revoked the power of attorney in the intervening years. Under these circumstances, the Navy reasonably determined that the validity of the power of attorney and the bid bond was uncertain, and properly rejected the bid as nonresponsive. Quantum Constr., Inc., supra.

The protest is denied.

Comptroller General
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¹A surety's certification attesting to the continuing validity of the power of attorney, which is made by the surety at a date reasonably close to the date of the bid bond, provides the government with a reasonable assurance that the surety has not revoked the power of attorney prior to the execution of the bid bond. Integrity Works, B-258818, Feb. 21, 1995, 95-1 CPD ¶ 98 (bid is responsive where the certificate was signed only 1 day prior to bond date).