DECISION

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

FILE: B-216699 DATE: December 27, 1984

MATTER OF: O.V. Campbell and Sons Industries, Inc.

DIGEST:

A bid is nonresponsive where the bid bond furnished with the bid listed one surety company on the face of the bond but the corporate seal and attached power of attorney for the signer of the bond is from another surety since it is unclear from the bid documents, including the bond, whether either surety is bound.

O.V. Campbell and Sons Industries, Inc. protests the rejection of its low bid under invitation for bids (IFB) No. F01600-84-B-0014, issued by the Department of the Air Force for new roofs for buildings at an air base. The agency's contention, which Campbell disputes, is that Campbell's bid bond was defective and its bid was therefore nonresponsive. We deny the protest.

The corporate surety listed at the top and bottom of the bid bond was American Manufacturers Mutual Insurance Company, a Georgia corporation. The corporate seal affixed to the bid bond, however, was that of the American Motorists Insurance Company, an Illinois corporation, and the attached power of attorney was issued by American Motorists designating the same attorney-in-fact who signed the bond.

The agency contends that this created an uncertainty because while it was clear that the attorney-in-fact was duly authorized to bind American Motorists, his authority to bind American Manufacturers was questionable and that it was unclear which surety the attorney-in-fact intended to bind. Therefore, the

agency argues, either company could deny the bond if enforcement was attempted.

Campbell points out that the attorney-in-fact was duly authorized by each surety company and that simple inquiry, beyond the attorney's control, could have established that he was duly authorized by American Manufacturers to bind the company. Campbell points that there is no question that the attorney intended to bind American Manufacturers and that the power of attorney and the corporate seal go only to the quality of the evidence of the authority of the attorney. In support of his position that the bid bond should have been accepted, Campbell cites Hancon Associates-Request for Reconsideration, B-209446.2, Apr. 29, 1983, 83-1 CPD ¶ 460 in which we reversed our decision in Atlas Contractors, Inc., B-209446, Mar. 24, 1983, 83-1 CPD ¶ 303 and held that a bid bond naming two different sureties could be accepted because it then appeared that the intended surety's ability to avoid an obligation under the bond was too remote in view of other indication on or accompanying the bond to endanger enforcement if necessary.

A bid bond or bid guarantee is a type of security that assures that the bidder will not withdraw its bid within the time specified for acceptance and, if required, will execute a written contract and furnish payment and performance bonds. Federal Acquisition Regulation (FAR), § 28.001. The purpose of the bid bond is to secure the liability of a surety to the government if the bidder fails to fulfill these obligations. Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 CPD ¶ 400. Thus, the sufficiency of a bid bond depends on whether the surety is clearly bound by its terms and when the liability is not clear, the bond is defective. Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 CPD ¶ 591. The reason for this is that under the law of suretyship, no one can be obligated to pay the debts or to perform the duties of another unless that person expressly agrees to be bound. Andersen Construction Co.; Rapp Constructors, Inc., 63 Comp. Gen. 248 (1984), 84-1 CPD ¶ 279. We have held that it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD ¶ 194.

Noncompliance with the bid bond requirements can only be waived under those conditions specified in FAR, § 28.101-4, none of which are present in this case.

In the Hancon case, supra, the corporate seal affixed to the bond and the power of attorney authorizing the attorney-in-fact to sign were from the same surety whose name was listed at the top of the face of the bond. The surety listed on the bottom of the bond, however, was that of another company. We concluded that in view of the seal and the power of attorney, only the surety listed at the top of the bond could be bound. The facts here are inapposite to those in the Hancon case because neither the seal nor the power of attorney support the authority of the signer to bind the named surety. The bond form specifically requires an attorney-in-fact to submit with the bond evidence of his authority to bind the intended bonding company. This was not done here and recourse to evidence outside the bid documents could not properly be taken. Thus, there is a legitimate question whether either American Manufacturers or American Motorists, could be bound and thus the bid was properly rejected as nonresponsive.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States