



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Best Western Conference Center

File: B-255425

Date: February 28, 1994

Phillip E. Johnson for the protester.
Robert E. Sebold, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where the individual signing the bid included ownership and corporate titles after his name, even though the bidding entity identified itself as a joint venture, the agency properly could conclude from the bid itself, the performance history of the entity (the incumbent contractor), and information in an existing and publicly available state tax license that the identity of the bidding entity was not ambiguous.

2. Based on an established course of conduct with the proposed joint venture and the terms of the joint venture agreement, the agency could reasonably conclude that the individual signing the bid had the authority to bind the entity to the terms of the solicitation.

DECISION

Best Western Conference Center protests the proposed award of a contract to Howard Johnson Lodge under invitation for bids (IFB) No. DLA004-93-B-0017, issued by the Defense Logistics Agency for lodging and meal services for the Military Entrance Processing Station, Harrisburg, Pennsylvania. The protester argues that Howard Johnson Lodge's bid should be rejected as nonresponsive because the legal status of the bidding entity is ambiguous and, in the alternative, it is not clear that the individual signing the bid has the authority to bind the bidder.

We deny the protest.

The IFB was issued on June 15, 1993. Amendment No. 0001 was issued on July 6. Four bids were received by the bid opening time on July 22. Howard Johnson Lodge, the incumbent contractor for the last 3 years, was the apparent low bidder and Best Western was the apparent second low bidder. Pending this decision, the agency proposes to award a contract to Howard Johnson Lodge.

The protester first argues that the legal status of the bidding entity is ambiguous. The protester states that the bid was submitted by "Howard Johnson Lodge," which certified that it was a "joint venture." The individual who signed the bid signed as an "owner/operator," which the protester maintains is evidence that the bidding entity is a "proprietorship." The same individual signed amendment No. 0001 as "vice president," which the protester maintains is evidence that the bidding entity is a corporation. Based on this information, the protester contends that the legal status of "Howard Johnson Lodge," the bidding entity, is ambiguous, thus making the bid nonresponsive.

Uncertainty as to the identity of the bidder is a circumstance that renders a bid nonresponsive, since the bidder potentially could avoid the obligation to perform the contract. See Cline Enters., Inc., B-252407, June 24, 1993, 93-1 CPD ¶ 492. Here, however, the contracting officer properly determined that there was no uncertainty.

The record shows that the agency has done business with "Howard Johnson Lodge" as the incumbent contractor for the last 3 years, with the government issuing checks made payable to "Howard Johnson Lodge." The record further shows that "Howard Johnson Lodge" is the franchise, trade style name for the "Harrisburg Inn Joint Venture." The Pennsylvania Department of Revenue has issued a license to the joint venture entity, which trades as "Howard Johnson Lodge," to collect sales, use, and hotel occupancy taxes. The license includes the taxpayer identification number for the joint venture entity which is identical to the number included in the bid submitted by Howard Johnson Lodge. The license shows that the joint venture entity and Howard Johnson Lodge have the same address. Thus, given both the agency's experience with this bidding entity and the factual information available concerning it, we think the agency had a reasonable basis for concluding that "Howard Johnson Lodge," which certified that it was a "joint venture," was the bidding entity.¹

¹The protester states that the joint venture, a Delaware entity, is not registered in Delaware. However, unlike corporations, which are required to register in the state of
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The protester also questions whether the individual who signed the bid on behalf of Howard Johnson Lodge had the authority to do so.

The record shows that during the 3-year incumbency of Howard Johnson Lodge, the individual who signed this bid has been involved in the daily operation and management of Howard Johnson Lodge and has conducted business with the agency on behalf of Howard Johnson Lodge. The record also contains documentation showing that since 1990 the individual who signed this bid as an "owner/operator" and the amendment as "vice president" has signed other public contract documents during performance of the predecessor contract as an "owner" and "vice president" of Howard Johnson Lodge. Further, in response to the protest, the agency reviewed Howard Johnson Lodge's joint venture agreement. The agreement shows that the individual who signed the bid is, in fact, a "vice president" of a corporate entity which is part of the joint venture. We see no reason why the agency could not reasonably conclude from these circumstances that the individual signing the bid had the authority to bind Howard Johnson Lodge to the terms of the solicitation. Aul Instruments, Inc., B-199416.2, Jan. 19, 1981, 81-1 CPD ¶ 31.

Accordingly, the protest is denied.

Ronald Berger
 Robert P. Murphy
 Acting General Counsel

¹(...continued)

incorporation, we are not aware of any legal requirement, and the protester has not pointed to any legal requirement, that a joint venture register in the state where established.