



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: All Seasons Construction, Inc.

File: B-291166.2

Date: December 6, 2002

Donald A. Tobin, Esq., and Nick R. Hoogstraten, Esq., Bastianelli, Brown & Kelley, for the protester.

Andrew J. Kilpatrick, Jr., Esq., Gore, Kilpatrick, Purdie, Metz & Adcock, for Witherington Construction Corp., an intervenor.

Phillipa L. Anderson, Esq., Department of Veterans Affairs, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer reasonably determined bid bond accompanied by power of attorney bearing computer printer-generated signatures unacceptable because signatures were not applied to the document after its creation and thus do not serve to authenticate its contents.

DECISION

All Seasons Construction, Inc. protests the rejection of its low bid under invitation for bids (IFB) No. 667-29-02, issued by the Department of Veterans Affairs (VA) for the construction of operating rooms at the Overton Brooks VA Medical Center in Shreveport, Louisiana. The contracting officer rejected All Seasons' bid as nonresponsive based on her determination that neither the power of attorney attached to the protester's bid bond nor the accompanying certification attesting to the authenticity of the power of attorney and its continuing effectiveness was an original document. The protester contends that the document containing the power of attorney and certification was an original, and that the bid should therefore have been accepted.

We deny the protest.

The IFB required each bidder to submit with its bid a bid guarantee in the amount of 20 percent of the bid price or \$3 million, whichever was less. IFB § 4.26. Four bids

were received and opened on the August 20, 2002 bid opening date. All Seasons was the apparent low bidder with a bid of \$3,361,000. Witherington's bid was second low.

All Seasons' bid was accompanied by a bid bond signed by David A. Montgomery as attorney-in-fact for the surety, Hartford Casualty Insurance Company. The surety's corporate seal was crimped next to Mr. Montgomery's signature. A power of attorney appointing Mr. Montgomery as attorney-in-fact for Hartford Casualty Insurance Company was attached to the bid bond. The power of attorney, which affirmed the intention of the Company to be bound "by any mechanically applied signatures applied to this Power of Attorney," did not contain any ink signatures and was not crimped with the surety's corporate seal.

At the bottom of the power of attorney, there appeared the following statement:

I, the undersigned, Assistant Vice President of the Companies, DO
HEREBY CERTIFY that the above and foregoing is a true and correct
copy of the Power of Attorney executed by said Companies, which is
still in full force effective as of August 9, 2002.

Signed and sealed at the city of Hartford.

[Signature of Colleen Mastroianni]
Colleen Mastroianni, Assistant Vice President

The date August 9, 2002 was in a different size type than the rest of the document and had clearly been inserted after the document had been generated. The signature of Colleen Mastroianni beneath the certification was not in ink, and the certification was not crimped with the surety's corporate seal.

The contracting officer determined that the document containing the power of attorney and certification was not an original, and, thus, that it did not establish unequivocally at the time of bid opening that the bond would be enforceable against the surety in the event that the bidder failed to meet its obligations. Accordingly, she rejected All Seasons' bid as nonresponsive.

A bid bond is a form of guarantee designed to protect the government's interest in the event of default; that is, if a bidder fails to honor its bid in any respect, the bid bond secures a surety's liability for all procurement costs. A required bid bond is a material condition of an IFB with which there must be compliance at the time of bid opening; when a bidder submits a defective bid bond, the bid itself is rendered defective and must be rejected as nonresponsive. The determinative question as to the acceptability of a bid bond is whether the bid documents, including the power of attorney appointing an attorney-in-fact with authority to bind the surety, establish unequivocally at the time of bid opening that the bond is enforceable against the surety should the bidder fail to meet its obligations. If the agency cannot determine

definitely from the documents submitted with the bid that the surety would be bound, the bid is nonresponsive and must be rejected. Schrepfer Indus., Inc., B-286825, Feb. 12, 2001, 2001 CPD ¶ 23 at 2. Unless accompanied by an original certification from a current officer of the surety attesting to its authenticity and continuing validity, a photocopied power of attorney does not satisfy the requirement for a clearly enforceable guarantee because there is no way, other than by referring to the original after bid opening, to be certain that there have not been alterations to which the surety has not consented. Id. at 2-3; Daley Corp.—California Commercial Asphalt Corp., J.V., B-274203.2, Dec. 9, 1996, 96-2 CPD ¶ 217 at 3-4. The same is true of a faxed power of attorney (that is, an electronically transmitted copy of a power of attorney). Kemper Constr. Co., Inc., B-283286.2, Nov. 29, 1999, 99-2 CPD ¶ 98 at 3.

The protester contends that the foregoing guidance concerning faxed or photocopied powers of attorney is inapplicable here because the power of attorney/certification that accompanied its bid bond was a “computer printer-generated original document containing computer printer-generated signatures and seals.”¹ Protest at 2. All Seasons argues that a power of attorney bearing mechanically applied signatures is valid and binding where it affirms the surety’s intention to be bound by the signatures.

While we have recognized a power of attorney bearing mechanically applied signatures as valid and binding where there is evidence demonstrating that the surety intends to be bound by such signatures, see Fiore Constr. Co., B-256429, June 23, 1994, 94-1 CPD ¶ 379 at 2-3, we conclude that, for a mechanically applied signature to be recognized as valid and binding, it must be affixed to the power of attorney after the power of attorney has been generated. Where, as here, signatures are generated as part of a document, as opposed to being affixed to the document after its generation, they do not constitute an affirmation as to the correctness of its contents and thus do not serve to validate the document. In the absence of a validating signature, there is no way to be certain at the time of bid opening that the file from which a computer printer-generated power of attorney/certification was created has not been altered, just as there is no way to be certain that the original from which a faxed or photocopied power of attorney/certification was created has not been altered.

¹ While the protester characterizes the power of attorney as an “original” document generated by a computer printer, we note that in a statement responding to the protest, the contracting officer states that, after reviewing the power of attorney, he concluded that it was a photocopy. While the agency does not further advocate this position in its report, our review of the power of attorney confirms that it in fact looks more like a photocopy than a document generated by a computer printer. This fact in itself would be sufficient to justify rejection of the bid under the long-standing rule, cited above, that photocopied powers of attorney are not acceptable.

While, as noted above, an original certification from a current officer of the surety attesting to its authenticity and continuing validity would have been sufficient to validate the power of attorney that accompanied All Seasons' bid bond, the certification submitted by the protester's surety suffered from the same defect as the power of attorney itself--i.e., it contained only a computer printer-generated signature; thus, it did not serve to validate the power of attorney. Moreover, the certification is itself of questionable validity because it clearly had been altered--through insertion of the date August 9, 2002²-- after being printed, and there is no evidence that the assistant vice president whose computer printer-generated signature appears beneath the certification was aware of or approved the alteration.

Because neither the power of attorney nor the certification of continuing validity attached to the protester's bid bond bore signatures that had been applied to the document after its creation, we think that the contracting officer reasonably concluded that they did not establish unequivocally at the time of bid opening that the bond would be enforceable against the surety in the event that the bidder failed to meet its obligations. Accordingly, she properly rejected All Seasons' bid as nonresponsive.³

The protest is denied.

Anthony H. Gamboa
General Counsel

² As noted above, it is evident from the different type size that the date was added to the document after it was printed. The protester concedes as much in its pleadings, noting that "the 'still in full force' date . . . was typed onto the document by typewriter." Protest at 2.

³ In its report on the protest, the agency takes the position that the power of attorney/certification is invalid because it lacks an original corporate seal. In our view, the determinative issue in deciding whether a power of attorney is valid is not whether it bears an original corporate seal; the determinative issue is whether the power of attorney is properly signed. Application of an original corporate seal is not sufficient to overcome the lack of a proper signature, see Schrepfer Indus., Inc., supra, at 3, and we see no basis to find that an original corporate seal is required for a properly signed power of attorney to be considered authentic.