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DECISION



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

FILE: B-220556

DATE: December 3, 1985

MATTER OF: Langaker Marine, Inc.

DIGEST:

Where surety's power of attorney form attached to bid bond fails to designate the individual who signed the bond on behalf of the surety as an attorney-in-fact authorized to bind the surety, the agency properly determined the bond to be defective and the bid nonresponsive because it is not clear whether the surety would be bound.

Langaker Marine, Inc. (Langaker), protests the rejection of its low bid under invitation for bids (IFB) No. R10-85-38 issued by the Forest Service for the construction of a log conveyor system. The agency's contention, which Langaker disputes, is that Langaker's bid bond was defective and the bid was, therefore, nonresponsive. We deny the protest.

Langaker's bid was accompanied by a bid bond naming Safeco Insurance Company of America (Safeco) as the surety. The bond was signed on behalf of Safeco by Doris M. Adams, who was identified as attorney-in-fact. However, a Safeco power of attorney form attached to the bond, which lists attorney(s)-in-fact designated by Safeco to bind the company, failed to designate Adams as an attorney-in-fact.

Langaker explains that Adams name inadvertently was omitted from the power of attorney form. However, the firm states that the contracting officer knew that Adams was authorized to bind Safeco because in connection with another Forest Service procurement, Adams was designated as an attorney-in-fact on a Safeco power of attorney form. On this basis, Langaker contends that the contracting officer

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should have determined the firm's bid to be responsive. In support of its contention, Langaker cites, General Ship & Engine Works, Inc., 55 Comp. Gen. 422 (1975), 75-2 C.P.D. ¶ 269, in which we held that the evidence required to establish the authority of a particular person who signed a bid bond on behalf of the bidder is for the determination of the contracting officer and can be provided after bid opening.

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. Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 C.P.D. ¶ 268; Minority Enterprise, Inc., B-216667, Jan. 18, 1985, 85-1 C.P.D. ¶ 57; O.V. Campbell and Sons Industries, Inc., B-216699, Dec. 24, 1984, 85-1 C.P.D. ¶ 1. Thus, a bid bond in the proper amount is regarded as defective, rendering the bid nonresponsive, if it is not clear that it will bind the surety. Sevcik-Thomas Builders and Engineers Corp., B-215678, July 30, 1984, 84-2 C.P.D. ¶ 128. 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. 249 (1984), 84-1 C.P.D. ¶ 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 C.P.D. ¶ 194.

General Ship & Engine Works, 55 Comp. Gen., supra, and other cases cited by the protester, concerned the authority of an individual to sign the bond on behalf of the bidder. In those cases, we held that the bid may be considered for award because it was clear that the surety was bound. See e.g., Sevcik-Thomas Builders and Engineers Corp., B-215678, supra. We have also noted that with respect to a bidder (unlike a surety) "there is a separate agreement in the form of a bid" which establishes the bidder's obligation to the government and upon acceptance of that agreement, the bidder is fully bound to perform. General Ship & Engine Works, Inc., 55 Comp. Gen., supra.

In this case, however, the surety's power of attorney form authorizing certain individuals to bind the surety did not include the individual who signed the bond on behalf of the surety. This created an uncertainty whether the signer was duly authorized to bind the surety. See, Desert Dry-waterproofing Contractors, B-219996, supra; O.V. Campbell & Sons Industries, B-216599, supra; Hydro-Dredge Corporation, B-214408, Apr. 9, 1984, 84-1 C.P.D. ¶ 400. Since there is a legitimate question whether the surety could be bound on the bond, the bid properly was rejected as nonresponsive. See Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 C.P.D. ¶ 591. Although Langaker submitted with its protest a letter from Safeco stating the company's intent to act as surety for this bid, evidence outside the bid documents cannot properly be considered in determining the responsiveness of the bid. Minority Enterprises, Inc., B-216667, supra.

The protest is denied.

for *Sergione Efros*
Harry R. Van Cleve
General Counsel