



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Baldi Brothers Constructors

File: B-224843

Date: October 9, 1986

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### 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. Evidence of the authority of surety's agent to sign bid bond on behalf of the surety generally must be furnished with a bid prior to bid opening, and failure to furnish it renders bid nonresponsive.

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### DECISION

Baldi Brothers Constructors (Baldi) protests the rejection of its low bid under invitation for bids (IFB) No. N62474-84-B-4248 issued by the Department of the Navy for construction work. The agency's determination which, Baldi disputes, was that Baldi's bid bond was defective and the bid was, therefore, nonresponsive.

We dismiss the protest without obtaining an agency report because it is clear on its face that the protest is without legal merit. 4 C.F.R. § 21.3(f) (1986).

Baldi indicates that its bid was accompanied by a bid bond naming Fidelity and Deposit Company of Maryland (Fidelity) as the surety. The bond was signed by a Mr. Hossli, who was identified as attorney-in-fact. However, the Fidelity power of attorney form attached to the bond did not name Mr. Hossli as attorney-in-fact. Instead, there was attached a power of attorney for another individual, Mr. Kiley. According to Baldi, the Marine Corps, citing Langaker Marine, Inc., B-220556, Dec. 3, 1985, 85-2 C.P.D. ¶ 623, has rejected Baldi's bid as nonresponsive because the power of attorney attached to the bid bond submitted with Baldi's bid did not name the person whose signature appears on the face of the bid bond as attorney in fact.

In Langaker, the protester asserted that the name of the attorney-in-fact had been omitted inadvertently from the power of attorney form. The firm stated that the contracting officer knew that the signatory was authorized to bind the surety because this same individual had been designated as an attorney-in-fact on that surety's power of attorney form in connection with another solicitation by the same agency. The protester therefore argued that the contracting officer properly could determine the firm's bid responsive.

In rejecting Langaker's argument, we stated that 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. 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. Langaker, Marine, Inc., B-220556, *supra*; Desert Dry Waterproofing Contractors, B-219996, Sept. 4, 1985, 85-2 C.P.D. ¶ 268. Thus, we repeatedly have held that 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. 248 (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.

In Langaker, 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. We found that this created an uncertainty whether the signer was duly authorized to bind the surety and raised a legitimate question whether the surety could be bound on the bond. See Desert Drywaterproofing Contractors, B-219996, *supra*; Hydro-Dredge Corporation, B-214408, Apr. 9, 1984, 84-1 C.P.D. ¶ 400. Thus, we concluded that the bid properly was rejected as nonresponsive. See Truesdale Construction Co., Inc., B-213094, Nov. 18, 1983, 83-2 C.P.D. ¶ 591.

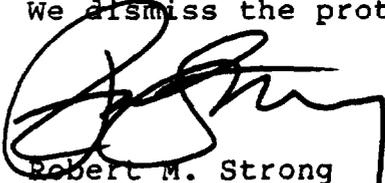
Baldi argues that the Langaker decision is distinguishable because the agency was on constructive notice of Mr. Hossli's authority to bind the surety. Baldi points out that notice

of Mr. Hossli's power of attorney was on file with the Department of the Army central bond approving office in Fal Church, Virginia, and also was filed with the Office of the County Recorder in San Bernadino, California.

Baldi asks that we permit correction, as a minor informality of the clerical error in attaching the wrong power of attorney form to the bid. Alternatively, Baldi requests that we permit acceptance of a correct power of attorney form which it submitted after bid opening.

We previously have rejected the arguments made by Baldi. Even if we concede that the evidence indicates that Mr. Hossli has actual authority to bind the surety on the bond, this is not sufficient to conclude the bid was responsive. The issue here is not Mr. Hossli's actual authority to bind the surety, but rather whether it appeared from the face of the bid documents that his signature on behalf of the firm was authorized and binding. Baldi essentially concedes that this was not clear solely from the face of Baldi's bid documents. In order to establish otherwise, cooperation from the surety--the very party to be bound--was required. Since the responsiveness of a bid must be determined solely from the bid documents, the fact that extrinsic evidence may later have established that the attorney-in-fact's signature was authorized is of no consequence, notwithstanding the fact that the evidence was in existence at the time of bid opening. Nova Group, Inc., B-220626, Jan. 23, 1986, 86-1 C.P.D. ¶ 80; see Hydro-Dredge, B-214408, Apr. 9, 1984, 84-1 C.P.D. ¶ 400. Accordingly, the fact that evidence was available from other sources at the time of bid opening that Mr. Hossli was an authorized signatory for the surety, and that the protester also later established Mr. Hossli's authority to bind the surety, does not render Baldi's bid responsive. Nova Group, Inc., B-220626, supra; Langaker Marine, Inc., B-220556, supra. Moreover, the clerical error cannot be waived as a minor informality. Nova Group, Inc., B-220626, supra.

We dismiss the protest.



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