



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Brothers Construction Company, Inc.

File: B-278042

Date: November 10, 1997

Philip Chung, Esq., Chung & Press, for the protester.
Madeline Shay, Esq., Office of the Chief of Engineers, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Where power of attorney certificate attached to bid bond is endorsed with a facsimile, rather than an original, signature of surety's authorized representative, bond is defective and renders bid nonresponsive, even though certificate was embossed with surety's raised corporate seal; corporate seal is prima facie evidence that power of attorney is an authorized act but, since it does not expressly evidence surety's intent to be bound in the absence of the original signature of its authorized representative, it is not sufficient to render bond acceptable.

DECISION

Brothers Construction Company, Inc. protests the rejection of its apparent low bid as nonresponsive for lack of a valid bid bond, under invitation for bids (IFB) No. DACW31-97-B-0050, issued by the U.S. Army Corps of Engineers, for the removal and replacement of an existing roof, and other related services, for the Dalecarlia Pumping Station located in Washington, D.C. Brothers contends that the Army unreasonably concluded that its bid bond was defective.

We deny the protest.

The solicitation required bidders to submit a bid guarantee. Brothers submitted a bid bond signed by Justin R. Klein as attorney-in-fact for Greenwich Insurance Company, the surety. Accompanying the bid bond was a power of attorney, which was divided into three parts.¹ In part I, executed by Laura A. Shanahan in her capacity as vice president of Greenwich, Justin R. Klein was appointed as attorney-in-fact, with the power to execute bonds on behalf of the company. In part II, a notary authenticated Ms. Shanahan's signature. Part III, executed by Cathy A. Hauck in her capacity as second vice president and associate general counsel of

¹A power of attorney is evidence that the named attorney-in-fact is authorized to sign the bid bond on the surety's behalf, binding the surety to its terms.

Greenwich, certified that Ms. Shanahan had authority to appoint attorneys-in-fact for the purpose of making bonds on behalf of Greenwich, and that the power of attorney was still in full force and effect. The signature on the certificate is that of Ms. Hauck, but it is a facsimile, rather than an original, signature; there also is a facsimile imprint of the corporate seal on the left side of the signature, and an original, raised corporate seal of Greenwich next to the signature at the lower right hand corner. The Corps rejected the protester's bid as nonresponsive for lack of an original signature on the power of attorney, or language stating the surety would be bound by a facsimile signature.

A bid bond, a form of bid guarantee, is designed to protect the government's interest in the event of default. A bid bond is a material requirement of an IFB with which there must be compliance at the time of bid opening; when a bid includes a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Ray Ward Constr. Co., B-256374, June 14, 1994, 94-1 CPD ¶ 367 at 2. A bond is acceptable, and the bid is responsive, only if the agency can determine definitely from the documents submitted with the bid that the bond would be enforceable against the surety should the bidder fail to meet its obligations. A bond submitted with an invalid power of attorney may render the bid nonresponsive because a power of attorney authorizes the agent to act for the principal and only a valid power of attorney would indicate that the surety expressly agreed to be bound to pay the bond signed by the attorney-in-fact. Id. In this regard, in the absence of other evidence submitted with the bid that the surety will be bound by a facsimile signature, a power of attorney which is submitted with a facsimile (electronically produced, see Fiore Constr. Co., B-256429, June 23, 1994, 94-1 CPD ¶ 379 at 2-3, or electronically transmitted, see Ray Ward Constr. Co., supra, at 3-4), rather than an original, signature is invalid, and renders a bond unacceptable. Id. at 3. A statement included with the power of attorney that the surety fully intends to be bound by a facsimile or mechanically reproduced signature is considered sufficient to show the surety's intent to be bound. Id. at 4.

Brothers maintains that, even though its bond lacked an original signature and a statement that the surety intended to be bound by a facsimile signature, the raised corporate seal was sufficient to render the bond, and therefore the bid, acceptable. In this regard, Brothers cites decisions in which our Office has recognized that a raised corporate seal is prima facie evidence of the authenticity of an instrument, and that an instrument is the duly authorized act of the corporation. See Ray Ward Constr. Co., supra, at 4; Daley Corp.--California Commercial Asphalt Corp., J.V., B-274203.2, Dec. 9, 1996, 96-2 CPD ¶ 217 at 4. However, while the raised corporate seal does constitute evidence of authenticity of a bond, it is not a substitute for a statement that the surety intends to be bound by a facsimile signature; it does not rise to the level of an express indication that the surety intends to be bound by the bond even without the original signature of its authorized representative. We have never held otherwise. In the cases cited by the protester, the powers of attorney included language indicating that the surety would be bound by a facsimile

signature. The presence of an original corporate seal was merely additional evidence supporting the authenticity of the power of attorney.

We conclude that the surety's intent to be bound by the bond was not sufficiently established in the protester's bid, and that the bid therefore properly was rejected as nonresponsive.

The protest is denied.

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