

**DECISION**



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

60735

FILE: B-185725

DATE: April 8, 1976

MATTER OF: Wagner Moving and Storage

99087

**DIGEST:**

Clerical error by surety resulting in submission of bid bond limiting surety's liability to an amount less than that required by IFB is a material deviation requiring rejection of bid, and may not be waived except under the circumstances listed in FPR 1-10.103-4 (not applicable hereto), nor may such error be corrected after bid opening.

The subject protest has been filed against the rejection of a low bid for failure to furnish a sufficient bid guarantee.

Invitation for bids No. 3-76-FSS (7FZT) was issued by the General Services Administration (GSA), Federal Supply Service, Fort Worth, Texas for moving services incidental to the relocation of various Federal agencies in New Orleans. The subject solicitation required that each bidder furnish with his bid a guarantee in an amount equal to 50 percent of his total price, and further admonished that the failure to furnish a bid guarantee in the proper form and amount by the time set for opening of bids may be cause for rejection of the bid.

Upon the opening of bids on December 17, 1975, it was discovered that Wagner Moving and Storage's low bid of \$41,212 was accompanied by a bid bond setting forth a penal sum in the amount of \$25,000 but which limited the surety's liability to \$10,000. Inasmuch as the surety's stated liability was less than the required \$20,606 (to constitute 50 percent of Wagner's bid price), the contracting officer determined that Wagner's bid was nonresponsive for failure of the bid bond to comply with the essential requirements of the solicitation. Consequently, an award was made on January 7, 1976, to Gallagher Transfer and Storage Company, Inc. on the basis of its second low bid of \$113,000. By letter of January 8, 1976, the contracting officer returned Wagner's bid bond with an explanation for the rejection of its bid.

By letter of January 9, 1976, Wagner enclosed a "corrected" bid bond, raising the surety's liability to \$25,000, and explaining that the surety had committed a "typographical error" on the

initial bond. An investigation revealed that prior to submission of the initial bond, it was discovered that the bid guarantee form set forth a 20 percent figure, penal sum of \$10,000, and surety's liability of \$10,000. At the surety's direction, the surety's secretary changed the first two figures to 50 percent and \$25,000 but, through oversight, neglected to change the liability limit next to the surety's executed signature. By letter of January 13, 1976, the contracting officer returned the corrected bid bond, advising that the nonresponsive bid could not be made responsive through such procedure.

The protester, through its counsel, contends that the defect in the original bond was such an obvious typographical error on the face of the document that it constituted a minor informality or irregularity which the contracting officer should have waived or, in the alternative, should have permitted the protester to correct after bid opening.

Federal Procurement Regulations (FPR) § 1-10.103-4 (June 1964 ed.) provides that where, as in this instance, an invitation for bids requires a bid guarantee in the proper form and amount, noncompliance with the invitation's requirements requires rejection of the bid, and a noncompliance may be waived only under four specified circumstances, none of which are present in the instant case.

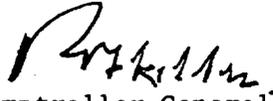
In cases similar to the one before us, we have held that the failure of a low bidder to submit a bid bond in the required amount due to a clerical error by the surety represents a material deviation which may not be administratively waived except under the circumstances specified in the cited FPR provision, and therefore such a bid must be rejected. See 39 Comp. Gen. 827 (1960); B-145766, May 16, 1961; B-177712, March 15, 1973. With regard to the particular circumstances of the instant case, deficiencies in bid bonds incurred by a limitation of liability by the surety to an amount less than that specified by the invitation requires rejection of the bid unless the deficiency may be waived pursuant to one of the exceptions listed under FPR § 1-10.103-4. See 51 Comp. Gen. 802 (1972). Nor may a bid bond, rendered deficient through a clerical error, be corrected after bid opening since it is contrary to established formal competitive procurement procedures to correct a nonresponsive bid so as to make it responsive. B-177712, supra; 38 Comp. Gen. 819 (1959). In this regard, the authority to permit correction of bids is limited by the Federal Procurement Regulations to bids which, as submitted, are responsive to the invitation, and may not be used to permit the correction of bids to make them responsive. B-177712, supra.

B-185725

In view thereof, we must conclude that the bid bond deficiency in the instant case was not eligible for either waiver or post-bid opening correction, and that the bid was properly rejected.

Finally, we note that award was made to the second low bidder at \$113,000 while Wagner's low bid was \$41,212. In this connection, we have been advised by GSA that it considers Gallagher's bid price to be reasonable based upon a comparison with recent contracts for similar work, and that GSA suspected Wagner's low bid was the product of a mistake. Under these circumstances, we have no basis for objection to the award to Gallagher.

Accordingly, the protest is denied.

  
Acting Comptroller General  
of the United States