

11041
03889

DECISION



FRANCIS P.L.I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-189277

DATE: October 3, 1977

MATTER OF: General Elevator Company, Inc.

DIGEST:

1. Protest based on illegibility of bid guarantee clause in bid package should have been filed prior to bid opening as bidder has responsibility to carefully examine solicitation to ascertain Government's requirements; thus, no legal basis exists to waive bid bond requirement even if due to Government error.
2. Rejection of bid as nonresponsive for failing to have sufficient bid guarantee was proper because bid guarantee requirement is material part of IFB and alleged mistake in amount of bid bond may not be corrected, as to do so would make nonresponsive bid responsive after bid opening.

An invitation for bids (IFB) was issued by the General Services Administration (GSA) on April 4, 1977. The three bids received were opened on May 4, 1977. General Elevator Company, Inc. (General), submitted the apparent low bid of \$52,700 and the apparent second low bid of \$70,842 was submitted by Standard Elevator Company (Standard).

Standard form 20 of the IFB requires a bid guarantee in the amount of 20 percent of the amount of the bid, "or \$3,000,000, whichever is less." The agency acknowledges that the figure was intended to be \$3,000,000, pursuant to FPR § 1-10.103 (1964 ed.).

The bid guarantee submitted by General on Standard Form 24 (Bid Bond) was in the amount of 20 percent of bid price "not to exceed \$3,000.00." General's bid was rejected as being nonresponsive for failure to submit a bid guarantee in the required amount and award was made to Standard on June 1, 1977. General was notified of the rejection of its bid on the same date.

General filed a timely protest with our Office on June 7, 1977, objecting to the rejection of its bid. General acknowledges that there is an error in its bid bond; however, it contends that the error is minor and insignificant and that it was due to the illegibility of the bid guarantee instructions on standard form 20. General also argues that the Government would save \$18,142 (the difference between its bid price and the second low bid) by awarding the contract to General rather than to the second low bidder.

B-189277

With regard to General's assertion that any error it committed was harmless and should be waived, our Office has consistently held since 38 Comp. Gen. 52 (1955) that a bid guarantee requirement in an invitation for bids is material, and the procuring activity cannot waive a failure to comply with that requirement, but must reject as nonresponsive a bid not accompanied by a bid guarantee in the required form and amount. See E. Sprague, Batavia, Inc., B-183082, April 2, 1975, 75-1 CPD 194; Majestic Window Cleaning Company, B-182968, April 17, 1975, 75-1 CPD 231.

Furthermore, Federal Procurement Regulations § 1-10.103-4 (1964 ed.) limits waiver of the bid bond requirement to specific circumstances not found here.

While it may well be that the "\$3,000,000" figure was subject to more than one interpretation, bidders are expected to scrutinize carefully the whole solicitation to ascertain the Government's requirements. Abbot Laboratories, B-163799, September 23, 1975, 75-2 CPD 171. Thus, if General had a question about the contents of the IFB, this matter should have been brought to the attention of the contracting officer prior to bid opening. E. Sprague, Batavia, Inc., *supra*. In any event, we have found no legal basis to waive bid guarantee requirements even in instances where failure to meet these requirements was due to Government error. B-175477, August 3, 1972.

In view of the \$18,142 difference between the bid prices of General and Standard, we believe the contracting officer properly declined to waive the deficiency in General's bid under FPR § 1-10.103-4, which permits such waiver where the amount of the erroneous bid guarantee is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid.

Concerning General's argument that substantial savings would be realized by the Government if its bid is considered the low bid, our Office has repeatedly held that strict maintenance of competitive bidding procedures is infinitely more in the public interest than obtaining pecuniary advantage in a given case.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States