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DECISION

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

FILE: B-203373

DATE: June 15, 1981

MATTER OF: Palmetto Roofing, Inc.

DIGEST:

Bid which was not accompanied by bid bond as required by invitation for bids is non-responsive even if bidder's failure to submit bid bond prior to bid opening was due to erroneous advice of agency personnel since United States is not liable for erroneous advice given by agency personnel and rejection of bid is required by law.

Palmetto Roofing, Inc. (Palmetto) has protested the rejection of its bid for roof repairs under invitation for bids (IFB) No. 125-0060 issued by the Federal Correctional Institution (FCI). Palmetto did not submit a bid bond prior to bid opening as required by the IFB. Palmetto alleges that it did not submit a bid bond with its bid because a FCI employee told a representative of Palmetto that a bid bond was not required at the time the bid was submitted.

Noncompliance with the requirement to submit a bid guarantee can be waived only under the specific circumstances set forth in Federal Procurement Regulations (FPR) 1-10.103-4 (1964 ed.). Where these circumstances do not exist (as is the case here), the bid must be rejected as nonresponsive. Klean-Vu-Maintenance, Inc., B-194054, February 22, 1979, 79-1 CPD 126. This is so even if the underlying cause of the bidder's error is the erroneous advice of a government employee because the rejection is required by the regulations and the regulations have the force and effect of law. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194. In this respect, the United States is not liable for its erroneous acts or advice of its employees, even if committed in the performance of their official duties. A.D. Roe Company, Inc., *supra*. For this reason, government solicitations normally advise bidders that oral advice will not be binding. FPR 1-16.901-22.

Because it is clear from Palmetto's initial submission that its protest was without legal merit, this decision has been reached without benefit of a report from FCI. Klean-Vu-Maintenance, Inc., *supra*.

The protest is summarily denied.

Milton J. Fowler

Acting Comptroller General
of the United States

[Protest of Bid Rejection as Nonresponsive]

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