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**DECISION**



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

FILE: B-204737

DATE: September 29, 1981

MATTER OF: Trans-Alaska Mechanical Contractors

**DIGEST:**

Where amount of awardee's bid bond was in excess of difference between awardee's bid and the next low bid, awardee's failure to provide amount of bid guarantee required by solicitation was properly waived by contracting agency.

Trans-Alaska Mechanical Contractors protests the award of a contract by the Department of Health and Human Services (HHS) to Chandler Plumbing and Heating, Inc., under invitation for bids (IFB) No. AK-81-F-11A31 for heating system renovation at Mt. Hayes School, Ft. Greely, Alaska. As the next low bidder, Trans-Alaska contends that it is entitled to award because Chandler's bid was nonresponsive for failing to include a bid guarantee in the amount required by the IFB.

For the reasons discussed below, we believe it is clear from Trans-Alaska's submissions that the protest is without legal merit, therefore we are deciding the matter without further case development. See Shipco General, Inc., B-204259, August 20, 1981, 81-2 CPD \_\_\_\_.

Chandler's bid guarantee of approximately \$10,000 was submitted in the form of a bid bond in the amount of 5 percent of its \$199,476 bid. Although this did not comply with the IFB's requirement for a 20 percent bid bond, which would be approximately \$40,000 in Chandler's case, HHS properly waived this deficiency in accordance with Federal Procurement Regulations (FPR) § 1-10.103-4 (1964 ed.) which provides that where the amount of a bid guarantee, though less than the dollar amount required, is equal to or greater than the difference between the price stated in the bid and the bid price stated in the next acceptable bid, the deficiency may be waived. In

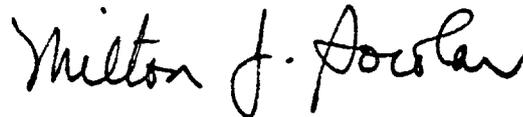
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this case, since the next acceptable bid was Trans-Alaska's \$201,350, Chandler's bid bond of approximately \$10,000 was greater than the approximately \$2,000 difference between the Chandler and Trans-Alaska bids.

By submitting a bid guarantee in an amount less than that required by the IFB, Chandler risked the possibility of being declared nonresponsive. Here, however, Chandler's bid bond was sufficient to fulfil the purpose of a bid guarantee, which is to protect the Government in the event of a default occasioned by a successful bidder's failure to execute any post award contractual documents and bonds by providing a penal sum which would be available toward off-setting any excess costs incurred by the Government in reprocurring the work. FPR § 1-10.103-3(a)(2).

Also, Trans-Alaska's claims for "anticipated overhead and profit plus all expenses incurred in this matter" are denied. There is no legal basis for allowing an unsuccessful bidder to recover anticipated profits. Jekyll Towing and Marine Services Corporation, B-199199, December 2, 1980, 80-2 CPD 413 and decision cited therein. Furthermore, the costs of pursuing a bid protest are not compensable. Bell and Howell Company, 54 Comp. Gen. 937 (1975), 75-1 CPD 273. Finally, because the protest is denied, recovery of bid preparation costs is not allowed. Jets, Inc., B-195617, February 21, 1980, 80-1 CPD 152.

The protest is summarily denied.



Acting Comptroller General  
of the United States