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DECISION

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

FILE: B-210177 **DATE:** February 3, 1983

MATTER OF: Young Patrol Service Inc.

DIGEST:

Where low bid is rejected because amount of bid guarantee is less than amount required by IFB, similarly defective higher bid may be accepted if amount of bond is sufficient to cover price difference between it and the next higher acceptable bid.

Young Patrol Service Inc. protests award to anyone but itself under Invitation for Bids (IFB) IFB-PBS-9PPB-82-0127 issued by the General Services Administration (GSA). We deny the protest.

According to Young, it has been notified that GSA plans to award the contract to the Diamond Detective Agency because its bid was lower in price than Young's. However, Young says it, not Diamond, is the lowest responsive, responsible bidder, because the amount of Diamond's bid bond is less than 20 percent of its first year price and thus the bond does not meet a 20 percent bid bond requirement contained in the IFB. Young admits that the amount of Diamond's guarantee ($128,000) is greater than the $40,000 difference between their two bids.

A bid which contains a guarantee insufficient in amount is nonresponsive and ordinarily cannot be accepted. Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290. However, an exception is made where a bond is sufficient to fulfill the purpose of the 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 submit any required performance bonds. Trans-Alaska Mechanical Contractors, B-204737, September 29, 1981, 81-2 CPD 268. Where

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the penal sum of a bid bond is equal to or greater than the difference between the defective bid and the next low acceptable bid, a bidder's failure to provide the required amount of guarantee may be waived since the bond is sufficient to offset the costs incurred by award of the contract to the next higher bidder. Accent General, Inc., B-192058, September 21, 1978, 78-2 CPD 215.

Young concedes that this rule, if applied, permits Diamond's bid to be accepted but contends that the deficiency in Diamond's bid should not be waived. Young cites Federal Procurement Regulations (FPR) § 1-10.103-4(b) as permitting the contracting officer to refuse to waive a bid guarantee deficiency where there are compelling reasons for not doing so. In this instance, Young asserts that GSA reached Diamond's bid only after other still lower bids were rejected for having insufficient bonds. To accept one bid but to reject other bids containing similar defects would be incongruous, in Young's view, because the Government is placed in the position of paying more to a higher-priced bidder, possibly for less bonding protection than was offered by others whose bids were rejected.

The waiver of the bid bond deficiency in this circumstance is mandatory under the cited regulation, Commercial Sanitation Service, 55 Comp. Gen. 352 (1975), 75-2 CPD 212, and the Government is fully protected from excess costs if award to the next bidder becomes necessary. The fact that lower bids might have been rejected because of deficient bonds[1] would appear irrelevant to this conclusion since those bonds would not have protected the Government as required.

The protest is summarily denied.

for Milton J. Socolar
Comptroller General
of the United States

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[1]We have been advised informally by GSA, however, that in fact the lower bids were not rejected because of deficient bid bonds. Rather, two were rejected for failure to acknowledge an amendment and to furnish any bid bond at all, while another bid could not be accepted because the acceptance period expired after a mistake-in-bid was alleged.