

**DECISION**

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

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**FILE:** B-214658**DATE:** April 10, 1984**MATTER OF:** Design Engineers**DIGEST:**

Bid bond with penal sum of substantially less than the required 20 percent of bid price renders bid nonresponsive because amount of guarantee was not equal to or greater than the difference between the price stated in the bid and the next higher acceptable bid, notwithstanding that deficiency may have resulted from an innocent error on the part of the surety. Deficiency may not be corrected to make a nonresponsive bid responsive and may not be waived.

Design Engineers (DE) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. DABT35-84-B-0003, issued by the Army for the installation of a water softener treatment system at Fort Dix, New Jersey. We summarily deny the protest.

The Army rejected DE's bid as nonresponsive because the bid bond submitted with DE's bid was for the penal sum of \$3,000, substantially below the required amount of \$5,397 which is 20 percent of DE's bid of \$26,985, as required by Defense Acquisition Regulation (DAR) § 10-103.2 and the IFB itself.

DE argues that its bid should be considered responsive because it submitted a bond with less than the required penal sum due to an innocent error on the part of itself, its insurance agent, and the bonding company. DE states that all the previously mentioned parties read the IFB requirement that the bond be for a penal sum "of twenty percent (20%) of the bid price or \$3,000,000. whichever is lesser" to state "twenty percent (20%) . . . or \$3,000 whichever is lesser." DE, therefore, states that it was bonded for \$3,000 believing that it met the requirements of the IFB. Additionally, DE protests the

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fact that the contracting agency did not give it adequate advice, after bids were opened, which would have permitted it to correct the deficiency before award. Finally, DE argues that because it was the low bidder by \$6,999, that sum would be wasted by the government by not permitting it to correct the deficiency and by permitting the second low bidder to perform the contract.

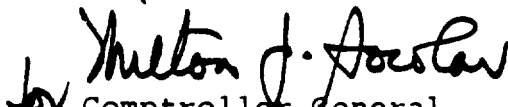
Ordinarily a bid which contains a guarantee or bond insufficient in amount is nonresponsive and cannot be accepted. Young Patrol Service Inc., B-210177, February 3, 1983, 83-1 CPD 125. However, insofar as is pertinent to this case, DAR § 10-102.5 (1976 ed.) permits award notwithstanding that a bid bond is deficient in amount, if the bond submitted is equal to or greater than the difference between the low bid price and the price stated in the next higher bid. Because DE's bond was for \$3,000 and the difference between DE's low bid and the next higher bid is \$6,999, DE's bond is deficient in this regard by \$3,999 and therefore the waiver provision of DAR § 10-102.5 does not apply. See Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290.

The rule that a bid with a bond of insufficient amount must be rejected if it does not meet the specific exceptions of DAR § 10-102.5 applies notwithstanding that the error may be attributable to the surety. Alaska Industrial Coating, supra.

We do not agree with DE's argument that the contracting officer acted improperly by not giving DE advice after bid opening and before award to enable DE to correct the bond deficiency. The bid bond requirement is a matter of responsiveness and as such, the adequacy of the bid bond must be determined at the time of bid opening. Andersen Construction Co.; Rapp Constructors, Inc., B-213955; B-213955.2, March 9, 1984, 63 Comp. Gen. \_\_\_, 84-1 CPD \_\_\_; Truesdale Construction Co., Inc., B-213094, November 18, 1983, 83-2 CPD 591. Since nonresponsive bids may not be made responsive by actions taken after bid opening, the contracting officer acted properly by not advising DE concerning correction of its bid bond deficiency. See Truesdale Construction Co., supra.

DE's final argument is that the bid guarantee requirement should be waived in this case because acceptance of its bid would result in approximately a \$7,000 cost savings to the government. A solicitation provision calling for a bid guarantee is a material requirement, however, and as such cannot be waived. Fitts Construction Co., Inc., 62 Comp. Gen. 615 (1983), 83-2 CPD 190; 38 Comp. Gen. 532 (1959); Elevator Electric Corporation, B-213245, October 25, 1983, 83-2 CPD 503. It has long been our position, furthermore, that the public interest in strictly maintaining the competitive bidding procedures required by law outweighs any pecuniary advantage which the government might gain in a particular case by a violation of those procedures. Century Metal Parts Corporation, 59 Comp. Gen. 184 (1979), 79-2 CPD 437; Elevator Electric Corporation, supra.

Accordingly, since DE's protest on its face is legally without merit, it is summarily denied.

  
for Comptroller General  
of the United States