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DECISION



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

FILE: B-218205

DATE: March 14, 1985

MATTER OF: AVS Inc.

DIGEST:

Bid with bid guarantee of 5 percent of the bid price, rather than the required 20 percent, is nonresponsive and deficiency may not be waived because amount of guarantee is not equal to or greater than difference in bids. Notwithstanding that deficiency may have resulted from an innocent error on the part of the surety, deficiency may not be corrected to make the bid responsive.

AVS Inc. (AVS) protests the rejection of its low bid as nonresponsive to solicitation No. RTX83525 issued by the General Services Administration (GSA), for space conversion. GSA rejected AVS's bid because its bid bond showed a bid guarantee in the amount of 5 percent, instead of the required 20 percent.

We dismiss the protest.

AVS's bonding company erroneously typed 5 percent as the bid guarantee amount. AVS requested that it be allowed to correct the error as a minor irregularity but the contracting officer denied the request and made award to another bidder. AVS argues that the award was made without providing it 10 working days to file its protest, as required by our Bid Protest Regulations. AVS contends that allowing it to correct the bid bond would not prejudice any other bidders and would meet the agency's needs at a saving of \$21,984.

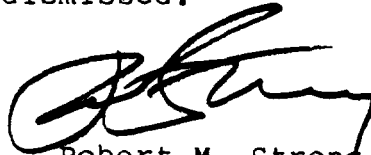
Generally, a bid which contains a guarantee insufficient in amount is nonresponsive and cannot be accepted. However, Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-4(b) (1984), permits award notwithstanding that a bid guarantee is less than the required amount if the guarantee is equal to or greater than the difference between the bid price and the next higher acceptable bid. AVS's bid price was \$295,161 and the next highest bidder was \$21,984 higher. Since AVS's bid guarantee was 5 percent of its bid price or \$14,758.05, its bid did not qualify for a waiver.

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The bid bond requirement involves a matter of responsiveness. Therefore, the adequacy of the bid bond must be determined at the time of bid opening. A solicitation provision calling for a bid guarantee is a material requirement and as such cannot be waived. Since nonresponsive bids may not be made responsive by actions taken after bid opening, the contracting officer's decision to deny AVS's request to correct the bid bond was proper. Furthermore, the rule that a bid with a bond of insufficient amount must be rejected if it does not meet a specific exception of 48 C.F.R. § 28.101-4 applies notwithstanding that the error may be attributed to the surety. Design Engineers, B-214658, Apr. 10, 1984, 84-1 C.P.D. ¶ 408.

Even though acceptance of AVS's bid would save money, 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. Moreover, our Bid Protest Regulations, 49 Fed. Reg. 49419 (Dec. 20, 1984) (to be codified in 4 C.F.R. part 21) do not require the agency to withhold an award unless a protest has been filed with our Office.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel