

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

FILE: B-186608

DATE: June 28, 1976

MATTER OF: Capital Coatings

**DIGEST:**

Agency properly determined that bid should be rejected as nonresponsive, where amount of bid bond was \$1,887.60 less than (and approximately 85 percent of) required guaranty, and substantially less than difference between first and second low bids, since deficiency is not de minimus, cannot be characterized as "minor" irregularity, and correction would have effect of making nonresponsive bid responsive after bid opening.

This is a protest filed by Jon R. Anderson, d.b.a. Capital Coatings (Capital), seeking waiver of a deficiency in a bid bond furnished in regard to General Services Administration IFB R-CO-75-081 for roof repairs. Capital's bid was rejected as nonresponsive.

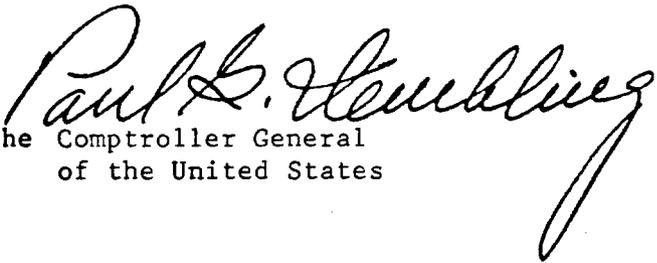
It appears that Capital submitted a bid in the amount of \$59,438, requiring a 20 percent bid bond of \$11,887.60. The next higher bid was \$79,485, or \$20,047 in excess of the Capital bid. Capital states that due to inadvertence by its bonding agent, and delay in obtaining Small Business Administration (SBA) approval of the guaranty, the bond was qualified as not to exceed \$10,000, and was forwarded directly, so that Capital was unaware of the deficiency until after bid opening. Capital admits that the bid guaranty was insufficient, but requests that the deficiency be waived as a minor informality.

While we have approved agency waivers of minor deficiencies in the face amount of a bid guaranty where it appeared that the Government's interests were adequately protected, those cases have been limited to situations where it clearly appeared that the deficiency was de minimus. For example, in Arch Associates, Inc., B-183364, August 13, 1975, 75-2 CPD 106, we held that the Army Corps of Engineers properly accepted a bid accompanied by a \$55,000 bid bond, notwithstanding that the bond was \$284 less than required. In contrast to the 0.5 percent deficiency demonstrated there, Capital requests that we excuse as a "minor" irregularity a guaranty of approximately 85 percent of the required amount. Since the difference between the first and second low bids is well in excess of the bond submitted (Cf. L. Reese & Sons, Inc., B-182050, November 11, 1974, 74-2 CPD 255), we

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are in agreement with the contracting agency's view that rejection of Capital's bid as nonresponsive was proper. The bid guaranty is a material requirement and correction of the amount of the bond has the effect of making a nonresponsive bid responsive after bid opening. E. Sprague, Batavia, Inc., B-183082, April 2, 1975, 75-1 CPD 194.

Accordingly, Capital's protest is denied.

  
For The Comptroller General  
of the United States