DECISION

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

FILE: B-219632 **DATE:** October 28, 1985

MATTER OF: Brener Building Maintenance Company, Inc.

DIGEST:

1. Where solicitation permits bidders to offer less than the standard 60-day bid acceptance period, bid which offered 60-day acceptance period but which provided a shorter expiration date in its bid guarantee effectively limits bid acceptance period to that in the bid guarantee. While this acceptance period may not be extended, award is permissible if made before the expiration date in the bid guarantee.

2. Bid guarantee which includes typographical alteration of two letters in work performance description is not materially altered where the guarantee is otherwise correct and sufficient and includes solicitation number as part of the same clause.

Brener Building Maintenance Company, Inc. (Brener), protests the award of a contract for glazing maintenance services to Clear-Day, Inc. (CDI), under invitation for bids (IFB) No. 652-39-86 issued by the Veterans Administration (VA). Brener asserts that CDI's bid was nonresponsive because of a defective bid guarantee.

We find the protest without merit.

The IFB required a bid guarantee and stated that bidders would be considered to have allowed a 60-day bid acceptance period unless a different period was inserted by the bidder. Bid opening was July 31, 1985. CDI's low bid indicated a 60-day bid acceptance period because no alternate acceptance period was inserted. However, CDI's bid

guarantee, an irrevocable letter of credit, had an expiration date of August 15, 1985. Subsequent to bid opening, at the request of the contracting officer, CDI submitted an amended bid guarantee with an expiration date of July 22, 1986. In addition, CDI's bid guarantee originally included the typed phrase "window placing," but was altered by pen to read "window glazing," by writing over the letters "p" and "c." Brener submitted the only other bid. The contracting officer awarded the contract to CDI on August 9, 1985.

Brener contends that CDI's failure to provide a bid guarantee which was valid coextensive with the bid acceptance period renders the bid nonresponsive and may not be cured after bid opening. Brener cites McNamara-Lunz Warehouses, Inc.; Central Moving and Storage, Inc., B-188100, June 23, 1977, 77-1 C.P.D. ¶ 448, to support this view. VA points out that the cited case involved an IFB with a mandatory 60-day bid acceptance period, where the bidder offered a bond with an earlier expiration date. Since the present solicitation permitted bidders to elect a shorter bid acceptance period, VA argues that the present case is controlled by the rationale in Control Central Corporation, et al., B-214466.2, et al., July 9, 1984, 84-2 C.P.D. ¶ 28, in which we held that where a bid guarantee was for a shorter period than an elected bid acceptance period, the bid could not be accepted after the bid guarantee expiration date. We agree.

The rationale in Control Central Corporation, et al., B-214466.2, et al., supra, was that the bid guarantee was insufficient only because the agency was not able to make award in the shortened period, not that the bid was rendered nonresponsive from the outset. In our view, prior cases such as McNamara-Lunz Warehouses, Inc., et al., B-188100, supra, and Munck Systems, Inc., B-186749, Oct. 19, 1976, 76-2 C.P.D. ¶ 345, treat bids with shortened bid guarantees as nonresponsive specifically because they conflict with a solicitation's mandatory bid acceptance period, which is a material requirement. International Service Corporation, B-217259, Mar. 1, 1985, 85-1 C.P.D. ¶ 259. However, where the IFB does not contain a mandatory bid acceptance period, a bidder is free to offer a period less than the standard period. Peck Iron and Metal Company, Inc., B-195716, Oct. 17, 1979, 79-2 C.P.D. ¶ 265. The bidder which offers an acceptance period shorter than that requested in the IFB runs the risk that award will not be made during the bid

guarantee acceptance period. Therefore, a bidder may not extend its acceptance period in order to be considered for award, since this would be prejudicial to other bidders who offered the requested acceptance period, because those bidders assumed a greater risk of price or market fluctuations. Ramal Industries Inc., 60 Comp. Gen. 666 (1981), 81-2 C.P.D. ¶ 177; Introl Corporation, B-206012, Feb. 24, 1982, 82-1 C.P.D. ¶ 164.

Here, CDI's bid contained a bid acceptance period shorter than the 60 days requested, but not required, under the IFB because of the earlier expiration date of its bid guarantee. Thus, CDI was not entitled to extend the expiration date in order to qualify for award. However, while CDI did provide such an extension, the extension was of no effect because VA made the award prior to the expiration date. Under these circumstances, the award was proper.

Regarding the alteration on the bid guarantee, Brener asserts that the alteration was material and rendered the bid nonresponsive, while VA contends that it is merely a typographical correction which was not a material alteration since it does not raise a question regarding the surety's obligation. We have held that a bidder's failure to comply with the exact requirements relating to bid bonds does not require rejection of a bid if a surety would be liable, notwithstanding the deviations. Thus, where a bond was lacking required dates, but correctly identified a solicitation by number and was otherwise sufficient, we found the surety's liability to be clear and permitted waiver of deficiencies as minor informalities. J.W. Bateson Company, Inc., B-189848, Dec. 16, 1977, 77-2 C.P.D. ¶ 472. Similarly, in Montgomery Elevator Co., B-210782, Apr. 13, 1983, 83-1 C.P.D. ¶ 400, we found that a typographical alteration in a bond describing the work to be performed was immaterial because the bond was proper and unaltered in all other respects, correctly identifying the principal and the invitation by number and including an appropriate penal amount.

That is precisely the situation in the present case. The contract is for window glazing maintenance, not for "window placing" or "window glazing" as stated in the bid guarantee. However, as in the Montgomery Elevator Co., case, supra, we believe this is immaterial as the bid guarantee included the correct solicitation number and was other wise proper. Thus, the alteration does not detract

from the liability of the surety and is not material. See Dragon Services, Inc., B-208081, July 27, 1982, 82-2 C.P.D. ¶ 86.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel