



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** HR General Maintenance Corporation

**File:** B-260404

**Date:** May 16, 1995

Ramesh Butani for the protester.  
Cynthia Guill, Esq., Department of the Navy, for the agency.  
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

Agency properly rejected as nonresponsive a bid accompanied by an altered bid bond, where the percent of bid price obligated, in the penal amount section of the bond, had been typed over an erased figure without evidence in the bid documents or the bond itself that the surety had consented to the alteration.

### DECISION

HR General Maintenance Corporation protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. N62477-94-B-0103, issued by the Department of the Navy, for roof replacement and repair on a building at the Naval Security Station, Washington, D.C. The Navy rejected the bid as nonresponsive because HR General submitted a bid bond which had been materially altered without any indication of consent to the change by the surety.

We deny the protest.

The IFB required the submission of a bid bond or other suitable bid guarantee in the amount of 20 percent of the largest amount for which award could be made under the bid submitted, not to exceed \$3,000,000. At bid opening on January 30, HR General submitted the apparent low bid of the 14 bids received. HR General's bid contained a Standard Form (SF) 24 bid bond, stating that the penal sum of the

bond was 20 percent of the bid price, in an amount not to exceed \$100,000, as follows:

PERCENT OF BID PRICE	PENAL SUM OF BOND			
	<u>AMOUNT NOT TO EXCEED</u>			
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
20%	---	100	000	00

Upon examining HR General's bond, the agency determined that the numeral "20," designating the percent of bid price, was in a different type face from that on the remainder of the bid bond and had clearly been typed over an erased figure. In the absence of any evidence in either the bid or the bid bond that the surety had consented to the alteration of the bond amount, the agency decided to reject HR General's bid as nonresponsive.

HR General states that it did not alter the penal sum on its bid bond. The protester also included with its protest a letter from its surety stating that it considers the bond to be enforceable. HR General also argues that the altered percentage number is immaterial because the bond states that the penal amount is not to exceed \$100,000, which far exceeds the required 20 percent of HR General's \$55,610 bid price.

A bid guarantee is a material part of a bid and when a bond is required, it must be furnished with the bid package. Baucom Janitorial Serv., Inc., B-206353, Apr. 19, 1982, 82-1 CPD ¶ 356. Since a material alteration of a bid bond made without evidence of the surety's consent discharges the surety from liability, the bond is not enforceable, and the bid it accompanies therefore is nonresponsive. Giles Management Constructors, Ltd., B-227982, Sept. 14, 1987, 87-2 CPD ¶ 248. The question here is whether the surety's obligation has been objectively manifested on the bidding documents so that the extent and character of its liability is clearly ascertainable. Allen County Builders Supply, 64 Comp. Gen. 505 (1985), 85-1 CPD ¶ 507.


Alteration of the penal amount of a bid bond, without evidence in the bid documents or the bond itself that the surety had consented to the alteration, renders the bond defective, and therefore nonresponsive. Hugo Key & Son, Inc.; Alco Envtl. Servs., Inc., B-251053.4; B-251053.5, July 15, 1993, 93-2 CPD ¶ 21. Here, on HR General's bid bond the percent of bid price figures were clearly typed over an erased figure. Under these circumstances, since the surety's obligation is expressed by a percentage which cannot be ascertained, there is no way to determine the amount of the penal sum actually provided. Since the

erasure effectively means that no ascertainable penal sum has been entered, the contracting officer reasonably determined that the surety's liability was uncertain rendering the bond defective, and properly rejected HR General's bid as nonresponsive. Allen County Builders Supply, supra.

HR General's argument that the altered amount is immaterial because the not-to-exceed figure of \$100,000 exceeds 20 percent of HR General's bid price, is misplaced. Notwithstanding the existence of a ceiling, the alteration simply makes it impossible to ascertain any actual amount for which the surety was obligated.

The surety's assurance that it would honor the altered bid bond has no effect on the agency's determination that its bid bond was defective, because a material defect in a bid bond cannot be explained or affirmed after bid opening. To permit this would place the surety in a position to disavow its obligation, thus compromising the integrity of the sealed bidding system by permitting the bidder to decide after bid opening whether or not to make its bid acceptable. Southland Constr. Co., B-196297, Mar. 14, 1980, 80-1 CPD ¶ 199.

The protest is denied.

  
for Robert P. Murphy  
General Counsel