

DOCUMENT RESUME

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[Bid Guarantee Requirement]. B-188978. August 29, 1977. 4 pp.

Decision re: Edward D. Griffith; by Milton Socolar (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Public Buildings Service.

Authority: B-186060 (1973). B-175597 (1972). B-176178 (1972).
B-179962 (1974). B-144967 (1961). 38 Comp. Gen. 532.

The protester objected to the award of a contract to John B. Glader, the high bidder, because his bid was accompanied by a personal check rather than a certified check, cashier's check, or postal money order, as specified in the invitation for bids. The bid guarantee requirement was a material part of the invitation which could not be waived and the submission of a personal check rendered the bid nonresponsive. Rescission of the sale, however, was not practical because the Government had accepted payment, conveyed the property to the purchaser, and authorized the removal of the property. (Author/SC)

Feldman
P.L. II

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DECISION



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

FILE: R-128978

DATE: August 29, 1977

MATTER OF: Edward D. Griffith

DIGEST

Bid guarantee requirement is material part of IFB which cannot be waived and submission of personal check rather than certified check, cashier's check or postal money order, as specified by invitation, renders bid nonresponsive. Rescission of sale, however, is not practical because Government has accepted payment, has conveyed property to purchaser and has authorized its removal.

Edward D. Griffith (Griffith) protests the award of a contract to John B. Glader (Glader) by the General Services Administration (GSA), Public Buildings Service, Real Property Division. The invitation for bids, (IFB) I-Mont.-544, was for the purchase and removal of log cabins in Glacier National Park, Montana. Glader was the high bidder for one of the cabins; his bid was accompanied by a bid deposit in the form of a personal check. The IFB required that bid deposits be in the form of "certified check, cashier's check, or postal money order."

On April 28, 1977, GSA orally advised Griffith that the high bidder had submitted a bid deposit in the form of a personal check. Griffith was informed that GSA considered the submission of a personal check a minor informality which could be waived and consequently award would be made to Glader. On April 29, 1977, Griffith orally informed GSA that it would protest such an award. Relying on what it believed was applicable legal authority, GSA again advised Griffith that award would be made to the high bidder. On May 4, 1977, Griffith's protest letter was received by GSA. On May 9, the GSA Regional Office denied the protest. Griffith's timely protest to our Office followed GSA's denial.

The record shows that GSA contacted Glader's bank on April 26, 1977, and was informed that Glader had sufficient

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funds to backup his personal check. Based on this information and decisions of this Office which we no longer follow, GSA determined that the submission of a personal check could be waived as a minor informality. By letter of May 2, 1977, GSA accepted the offer of Glader.

Paragraph 5 of the IFB requires that:

"Each bid must be accompanied by a bid deposit * * * in the form of a certified check, cashiers check or postal money order payable to the order of the General Services Administration."

Since 1959 we have held that a bid guarantee requirement is a material part of an invitation for bids, and that, except as provided in applicable regulations, a procuring activity must reject as nonresponsive a bid that does not comply with that requirement. Charles Bainbridge, Inc., B-186060, July 23, 1976, 76-2 CPD 160. As noted above, the IFB required the deposit of a bid guarantee in the proper form, and defined such form as "a certified check, cashiers check or postal money order." An uncertified personal check, such as the one submitted by Glader, lacks the status of a firm commitment inasmuch as such instruments are subject to such events as insufficient funds or stop payment orders. See B-175597, B-176178, August 14, 1972. These uncertainties still exist where, as here, the procuring activity receives assurances from the bidder's bank that sufficient funds are on hand. Because the bid guarantee requirement is a material part of the IFB which can not be waived, the submission of a bid guarantee in the form of a personal check rather than in the form of a firm commitment as defined by the invitation renders a bid nonresponsive. Southern Space, Inc., B-179962, March 29, 1974, 74-1 CPD 155. Consequently, GSA should have rejected Glader's bid as nonresponsive.

Under the circumstances, however, we cannot afford relief to Griffith. Paragraph 12 of the IFB provides that:

"12 CLOSING AND TITLE

"a. The closing of sale for the property offered shall be governed by this paragraph. In the event a bid for purchase is accepted, the successful bidder, shall within ten (10) calendar days from the date of notice of acceptance; or within such additional time as may be granted by the Government: (a) Pay to the Government the balance of the purchase price, and (b) furnish the cash special deposit. Conveyance of the Government's interest in the property will be made without warranty, express or implied, subject to the provisions of the Invitation for Bids, by furnishing the purchaser a copy of his bid evidencing acceptance on the part of the Government in the space provided.

"b. Title to the property for removal from site shall remain in the United States and the successful bidder shall not commence removal of the property or any part thereof until the full purchase price has been paid and the Government has conveyed the property to the purchaser as provided in this paragraph 12 and has authorized the purchaser to commence removal."

Glender paid the balance of the purchase price within 10 days from the date of notice of acceptance as well as the cash special deposit (performance bond). On May 11, 1977, GSA authorized the purchaser to commence removal. Accordingly, title to the property has vested in the purchaser. In such circumstances we must conclude that rescission of the contract would be neither practical nor in the best interests of the Government. See B-144967, May 15, 1961.

We note that Griffith contends that GSA made the award in an effort to avoid the protest. However, the record reflects that GSA made the award in reliance upon prior decisions of this Office which permitted waiver of the failure to comply with bid guarantee requirements in solicitations. However, these decisions should not

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have been followed because they were overruled in 38
Comp. Gen. 532 (1959).

Although we sustain the protest, relief at this time
would not be appropriate for the reasons stated.

for Milton F. Foster
Comptroller General
of the United States