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**DECISION**



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

FILE: B-189091

DATE: November 28, 1977

MATTER OF: Red Carpet Building Maintenance Corp.

**DIGEST:**

Rejection of bid for failure to furnish required bid guarantee is proper notwithstanding allegation that protester's bid package did not include page containing bid guarantee provision, since omission was apparently inadvertent and protester should have queried procurement office prior to submission of bid in view of cover page of solicitation which called bidders' attention to clause allegedly not included.

Red Carpet Building Maintenance Corp. (Red Carpet) protests the award of any contract under invitation for bids (IFB) No. DAKF03-77-B-0081, issued by the Department of the Army, Procurement Division (Army), Fort Ord, California, on August 1, 1977.

The IFB called for custodial services to be provided at four Southern California U.S. Army Reserve Centers, each of which was listed as a separate line item in the solicitation schedule. Section D-1 of the IFB authorized multiple awards when that would result in the lowest aggregate price to the Government.

The record indicates that 10 bids were received in response to the IFB. Red Carpet submitted the low bid for Item 0001 and in the aggregate. However, the bid from Red Carpet was submitted without a bid bond and was determined to be nonresponsive for failure to comply with the bid bond requirement of the IFB. Red Carpet then protested to this Office, alleging that the bond requirement was not clearly indicated in the IFB and requesting that the Government set aside the requirement and award all or part of the contract to Red Carpet. Subsequently, after determining that multiple awards would be advantageous to the Government, the Army awarded a contract to Fox & Fox Maintenance and Janitorial Service for Items 0002, 0003 and 0004, on which Red Carpet had not been the low bidder. The Army reports that it intends to award a contract for Item 0001 to Ameriko Co., the low responsive bidder on that item, although award is being withheld pending resolution of this protest.

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Red Carpet contends that the solicitation was unclear regarding the bonding requirement, that its bid package did not include the page which contained Clause C-26, the bid bond requirement, and that in contrast to solicitations issued by the same procuring activity, the cover sheet of this IFB did not specifically state that a bond would be required.

This Office has consistently held that the failure of a bid to comply with the bid guarantee provisions requires the rejection of the bid as nonresponsive and that the failure may not be waived or otherwise excused. See 38 Comp. Gen. 532 (1959); 46 Comp. Gen. 11 (1966). In addition, the Armed Services Procurement Regulation (ASPR) § 10-102.5 (1976 ed.) limits waiver of the bid bond requirement to specific circumstances not found here.

We see nothing in the circumstances of this case which would warrant a result other than that mandated by the authorities cited above. Although the cover sheet of the IFB did not explicitly identify a bid bond requirement, it did direct bidders' attention to Clause C-26. If that clause was not included in Red Carpet's bid package, we believe it was incumbent on the protester to query the procurement office with respect to that omission. Red Carpet cannot rely on the omission to defeat the Army's legitimate requirement. See, e.g., Avantek, Incorporated, 55 Comp. Gen. 735 (1976), 76-1 CPD 75; E. Sprague, Batavia, Inc., B-183082, April 2, 1975, 75-1 CPD 194. Moreover, we have often held that the inadvertent failure of the Government to send a potential bidder a complete bid package and amendments thereto does not excuse the bidder's failure to comply with all material requirements of the solicitation. 40 Comp. Gen. 126 (1960); B-175477, August 3, 1972.

In the latter case, the low bid for a construction contract was rejected as nonresponsive because it failed to comply with the bid guarantee requirement of the invitation. The protester objected to the rejection of its bid on the grounds that the bid package it obtained from the procurement activity did not include the standard form which contained the applicable bid guarantee provisions and offered to submit a proper bid guarantee

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so that award could be made to it as low bidder. We held that notwithstanding the fact that the protester did not receive the bid bond provisions, the requirement that an appropriate bid bond be timely submitted could not be waived. That decision, controlling here, mandates the rejection of Red Carpet's bid as nonresponsive.

The protest is denied.

*R. G. Kellum*  
Deputy Comptroller General  
of the United States