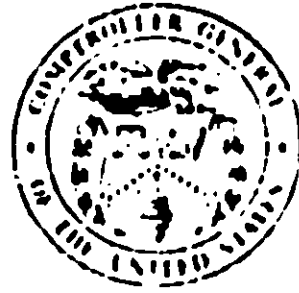


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DECISION



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

FILE: B-190295

DATE: October 12, 1977

MATTER OF: Alaska Industrial Coating

DIGEST:

1. Bid bond in amount of 10 percent rather than required 20 percent of bid price renders bid nonresponsive because amount of guarantee was not equal to or greater than the difference between price stated in bid and next higher acceptable bid, notwithstanding that difference resulted from surety's typographical error. Mistake may not be corrected to make nonresponsive bid responsive, and may not be waived.
2. Protest is summarily denied because protester's initial submission demonstrates affirmatively that it is not entitled to relief.

Alaska Industrial Coating protests the anticipated rejection of its bid submitted under IFB DAKF 70-77-B-0122, issued by Fort Richardson, Alaska (Army). The protester indicates that it submitted the low bid in response to the solicitation, in the amount of \$79,584.00, that the second low bid was in excess of \$91,000.00, but that as a result of an inadvertent typographical error the bid bond furnished was in the amount of 10 percent of the bid price, not 20 percent as required by the solicitation. The protester has been advised by the Army that its bid will be rejected due to this discrepancy.

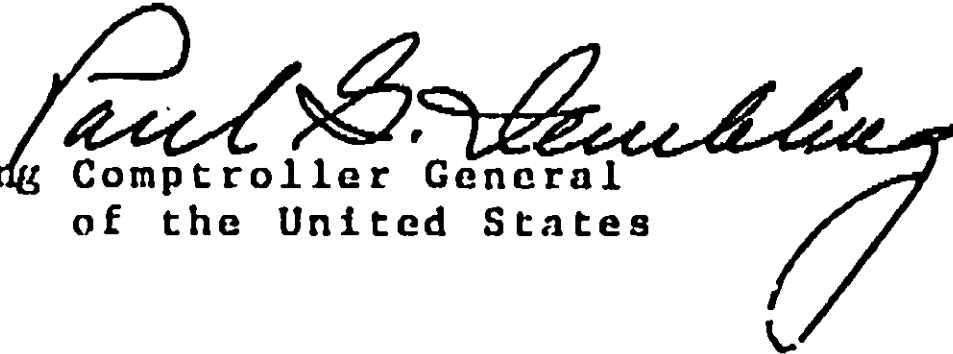
The protester urges that the Army waive the deficiency as merely involving an informality. In this connection the surety has admitted that the error was its fault, and that it is ready and willing to issue a performance bond in the required amount. Moreover, counsel asserts, the Government would save approximately \$12,000 if the deficiency is waived.

We believe the issue presented may be decided on the basis of the protester's initial submission and without further development pursuant to our protest procedures, 4 C.F.R. 20 et seq. (1977), because the documents

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submitted affirmatively demonstrate that the protester is not entitled to relief. Insofar as is pertinent to this case, the Armed Services Procurement Regulation § 10-102.5 (1977 ed.) permits award notwithstanding that a bid bond is deficient in amount, if the bond submitted is equal to or greater than the difference between the low bid price and the price stated in the next higher bid. However, it appears that the protester's bid is deficient in this regard by approximately \$4,000. This Office has consistently held that a bid guarantee requirement is material, and as such, cannot be waived unless one or more of the specific exceptions of ASPR § 10-102.5 applies, or the amount of the deficiency is plainly de minimus. 38 Comp. Gen. 532 (1959); Wagner Moving and Storage, B-185725, April 8, 1976, 76-1 CPD 237; Cf. Arch Associates, Inc., B-183364, August 13, 1975, 75-2 CPD 106. The rule applies notwithstanding that the error is attributable to the surety. The bond is a part of the bid whether submitted with it or separately, and a mistake may not be corrected if the effect is to make a nonresponsive bid responsive. See, Wagner Moving and Storage, supra. As our decisions indicate, the possibility that the Government might realize a monetary savings in a particular procurement, if the deficiency is corrected, is outweighed by the importance of maintaining the integrity of the competitive bidding system. A. D. Roe Company, 54 Comp. Gen. 271 (1974), 74-1 CPD 194.

Accordingly, Alaska Industrial Coating's protest is summarily denied.


Acting Comptroller General
of the United States