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G.P. Siegle, PL-2

**DECISION**



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

FILE: B-191703

DATE: May 25, 1978

MATTER OF: Newport Ship Yard, Inc.

**DIGEST:**

1. Where IFB required bidder to submit bid guarantee which would be available in event bidder later failed to provide performance and payment bonds, bid was properly rejected as nonresponsive when accompanied by irrevocable letter of credit which was available only if performance bond was not furnished.
2. Nonresponsive bid may not be made responsive through procedures for correction of mistakes in bid

Newport Ship Yard, Inc. (Newport) has protested the rejection of its bid under Invitation for Bids (IFB) No. AMC-78-17 for repairs to NOAA vessels Peirce and Whiting. The bid was rejected on the determination that it was nonresponsive as the letter of credit accompanying the bid, in lieu of a bid guarantee bond, provided that it would be effective upon Newport's failure to provide a performance bond within seven days of acceptance of bid and to enter into any formal contract. The letter of credit made no mention of a payment bond as required by the IFB.

Newport contends that the failure of the bank to include the provision for a payment bond in the letter of credit was a clerical typographical error by the financial institution and Newport subsequently forwarded a letter of credit which included coverage of a payment bond.

Newport also states that Federal Procurement Regulations (FPR) sections 1-2.406-3 and -4 concerning mistakes in a bid would allow it to correct the mistake in the bid guarantee.

The IFB contained the following provisions concerning bid guarantee and performance and payment bonds:

**"BID GUARANTEE**

A bid guarantee in the amount of 20 percent of the Class A Items is required. Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

\* \* \* \* \*

**PERFORMANCE AND PAYMENT BONDS**

Performance and Payment Bonds, each for 50 percent of the Class A Items will be required. The Offeror agrees that he will furnish Performance and Payment Bonds on Government Standard Forms with good and sufficient sureties within 7 days after notification of award of the contract."

Thus, in accordance with the IFB, Newport was required to submit a bid guarantee for both a payment and performance bond. Failure to comply with these terms of the IFB renders a bid nonresponsive and is cause for rejection. E. Sprague, Batavia, Inc., B-183082, April 2, 1975, 75-1 CPD 194; Cassidy Cleaning, Inc., B-191279, April 27, 1978. 78-1 CPD 331.

Beginning with our decision which is reported at 38 Comp. Gen. 532 (1959), we have consistently held that the bid bond requirement is a material part of the invitation and that the contracting officer cannot generally waive the failure to comply but must reject as nonresponsive a bid not accompanied by the

required bond. See, e.g., B-160507, December 27, 1966. We have held that even where the failure to furnish a bid bond is due to inadvertence, mistake or otherwise, the bid must still be rejected. B-167787, November 4, 1969. The bases for the rule that a bid guarantee requirement is material and cannot be waived by the contracting officer is that such waiver:

"\* \* \* \* would have a tendency to compromise the integrity of the competitive bid system by (1) making it possible for a bidder to decide after opening whether or not to try to have his bid rejected, (2) causing undue delay in effecting procurements, and (3) creating, by the necessary subjective determinations by different contracting officers, inconsistencies in the treatment of bidders. \* \* \*." 38 Comp. Gen. at 536 (1959).

Furthermore, it should be noted that waiver of the bid guarantee requirement would violate FPR section 1-2.404-2, "Rejection of individual bids", Subsection (f), which provides:

"Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in § 1-10.103-4."

The provisions of § 1-10.103-4 are not applicable in this instance.

Newport suggests that the error which created the deficient bid guarantee may be corrected under the procedures for the correction of mistakes in bids. However, our Office has held that it is contrary to established formal competitive procurement procedures to correct a nonresponsive bid to make it responsive. Davisville Construction Co., B-190080, December 12, 1977, 77-2 CPD 456. In this connection, we note that FPR section 1-2.406-3(a) provides in part that:

"The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive."

Additionally, Newport states that failure to make award to it will result in increased costs to the taxpayers.

We have held that contracting officers are not to be permitted to accept bids not complying in substance with the advertised specifications, nor are they to permit bidders to vary their proposals after bids have been opened, because the strict policy in favor of maintaining open competitive bidding is "infinitely more in the public interest than obtaining an apparently pecuniary advantage in a particular case \* \* \*." 17 Comp. Gen. 554, 558-559 (1938); Thorppe's Mowing, B-181154, July 17, 1974, 74-2 CPD 37.

For the foregoing reasons, the protest is denied.

*R. F. K...*  
Deputy Comptroller General  
of the United States