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ANSWERED BY LETTER
Opinion No. 483 (Siddens)

September 21, 1966

FILED
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Mr. John D. Paulus, Jr., Director
Division of Planning and Construction
Capitol Building
Jefferson City, Missouri

Re: Bid Bond of J. R. Seal Construction
Company - Insurance Company of
North America - Surety

Dear Mr. Paulus:

At your request we have reviewed the bid bond of the Insurance Company of North America in connection with the bid of the J. R. Seal Construction Company relating to the proposal for the State Highway Patrol warehouse building in Jefferson City. You have inquired with respect to the validity of this bid bond in the situation where the penal sum of the bond has not been filled in but has been left blank.

We make the following observations:

1. The Condition of the bond provides as follows:

"THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the aforesaid principal shall be awarded the contract, the said principal will within the period specified therefor, or, if no period be specified, within ten (10) days after the notice of such award enter into a contract and give bond for the faithful performance of the contract, then this obligation shall be null and void, otherwise the principal and the surety will pay unto the obligee the difference in money between the amount of the bid of the said principal and the amount for which the obligee may legally contract with another party to perform the work if the latter amount be in excess of the former; in no event shall the liability hereunder exceed the penal sum hereof."

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Mr. John D. Paulus, Jr.

You will observe that the principal and surety obligate themselves to the obligee to pay the difference in money between the amount of the bid of the principal and the amount for which the obligee may legally contract with another party to perform the work if the latter amount is in excess of the former. The failure therefore to include the penal sum is a mere irregularity and the penal sum may be inserted now or at any time.

2. It is clear that the obligee can now enforce this bid bond because of the above mentioned obligation.

3. The Invitation to Bid under Article VI of the instructions to bidders required the bid bond to be in the amount of five percent of the bid. It is therefore clear that an examination of the invitation to bidders together with the bid and the bond, the amount of the penal sum can be readily ascertained and should be read into the bond.

We conclude that the bid bond now having no penal sum filled in at the place provided is valid and can now be filled in and the bid may be accepted.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

By
J. Gordon Siddens
Assistant Attorney General

JGS/ms

