

**DECISION**

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

11/05/85

PC-#

31646

**FILE:** B-219416 **DATE:** July 9, 1985  
**MATTER OF:** Building Systems Contractors, Inc.

**DIGEST:**

1. A low bid was properly rejected as nonresponsive where the bidder furnished a bid guarantee in the form of an uncertified corporate check. Such an instrument lacks the status of a firm commitment because it is subject to dishonor through events such as insufficient funds in the account and stop payment orders.
2. Since a bid guarantee provision in an IFB is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive by furnishing the guarantee in proper form after bid opening, except under those limited conditions set forth in the Federal Acquisition Regulation, none of which are present here.
3. A certified check tendered to the contracting officer after bid opening does not constitute a permissible late modification of the bid because the bid was unacceptable as originally submitted for failing to include an adequate bid guarantee.

Building Systems Contractors, Inc., protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. 688-56-85, issued by the Veterans Administration (VA). The VA rejected the bid because it was accompanied by a bid guarantee in the form of an uncertified corporate check. Building Systems asserts that its corporate check was an adequate bid guarantee which did not render its bid nonresponsive. We dismiss the protest.

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Building Systems states that there was insufficient time to obtain either a bid bond or a certified check prior to the June 25, 1985, bid opening and the firm accordingly submitted an uncertified corporate check in the required amount of 20 percent of its bid as its bid guarantee. After bids were opened, the firm was informed that the check was unacceptable as a bid guarantee, and the firm then tendered a certified check in the proper amount to the contracting officer the day after bid opening. The contracting officer refused to accept the certified check and rejected the bid as nonresponsive.

Building Systems asserts that its check was a firm commitment that did not make its bid nonresponsive and urges that, in any event, it only represented a minor informality or irregularity which was subject to either correction or waiver. In this regard, the firm contends that its tender of a certified check on June 26 cured any irregularity in its bid, and that the contracting officer abused his discretion by not accepting it. The firm believes that, under the provisions of the IFB's bid guarantee clause, the failure to furnish a bid guarantee in proper form does not mandate the rejection of an otherwise responsive bid. Building Systems further asserts that its tender of the certified check constituted a permissible late modification of its bid which did not prejudice any other bidder. The firm points to the significant savings that would be realized by the government if its low bid were now accepted. We find no merit to the protester's position.

The solicitation's bid guarantee clause provided that "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," and that such guarantee was to be "in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States." See the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.228-1 (1984). An uncertified corporate check is not an adequate bid guarantee because it lacks the status of a firm commitment since it is subject to dishonor through such events such as insufficient funds in the account and stop payment orders. See Edward D. Griffith, B-188978, Aug. 29, 1977, 77-2 CPD ¶ 155.

We have consistently held that the failure of a bidder to present an adequate bid guarantee at the time of bid opening renders the bid nonresponsive. Colorado Elevator Service, Inc., B-206950.2, May 6, 1982, 82-1 CPD ¶ 434. Contrary to Building Systems' belief, the language in the bid guarantee clause providing that failure to comply "may be cause for rejection" cannot be viewed as discretionary, but is just as compelling and material as if more positive language were employed. Id. at 3. Accordingly, there is no blanket discretion vested in the contracting agency to waive deficiencies in bid guarantees. 38 Comp. Gen. 532 (1959). Thus, noncompliance with the bid guarantee requirement can only be waived under those limited conditions specified in the FAR, 48 C.F.R. § 28.101-4, none of which are present here.

We also do not agree with Building Systems' assertion that the tendered certified check represented a permissible late modification of its bid. The firm relies upon the FAR, 48 C.F.R. § 14.304-1(d), which provides that a late modification of an otherwise successful bid making its terms more favorable will be considered at any time and may be accepted. We have had occasion to consider and reject virtually the same argument with respect to an IFB provision incorporating the analogous section of the now-superseded Federal Procurement Regulations. In Colorado Elevator Service, Inc., B-206950.2, supra, we held that the regulatory provision for acceptance of a late modification only applies if the bid is acceptable as originally submitted. Since the protester's bid in that case was not acceptable as originally submitted because it did not include an adequate bid guarantee, it therefore was not an "otherwise successful bid" within the context of the provision. Id. at 4. We reach the same conclusion here because Building Systems' uncertified corporate check was an inadequate bid guarantee which made its bid unacceptable, and the tender of the certified check after bid opening, therefore, cannot be construed as a permissible late modification of an "otherwise successful bid" under the FAR, 48 C.F.R. § 14.304-1(d), supra.

Since an IFB provision calling for a bid guarantee is a material requirement which must be met at the time of bid opening, the purpose of which is to assure that the successful bidder will execute the contract and provide the

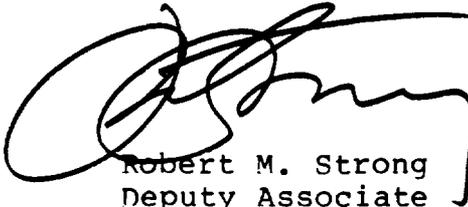
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necessary payment and performance bonds, Consolidated Technologies, Inc., B-215723, Dec. 7, 1984, 84-2 CPD ¶ 639, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive, as attempted here, by furnishing the guarantee in proper form after bid opening. AVS Inc., B-218205, Mar. 14, 1985, 85-1 CPD ¶ 328.

To the extent Building Systems contends that acceptance of its low bid will result in substantial savings to the government, the public interest in strictly maintaining the sealed bidding procedures required by law outweighs any monetary advantage which the government might gain in a particular case by a violation of those procedures. Id. at 2.

Accordingly, we conclude that the VA acted properly in refusing to accept the tendered certified check after bid opening and in rejecting the bid as nonresponsive for failing to furnish an adequate bid guarantee.

Therefore, since we find no valid basis for protest, the protest is dismissed. 4 C.F.R. § 21.3(f) (1985).



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