

nonoverly



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Hintz and Hintz Logging

File: B-225124

Date: November 18, 1986

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### DIGEST

Bid guarantee requirement is material part of IFB which cannot be waived and submission of company check rather than certified check, bank draft, cashier's check or money order, as specified by the invitation, renders bid nonresponsive.

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### DECISION

The Forest Service requests an advance decision on an agency-level protest filed by Hintz and Hintz Logging (Hintz) against the rejection of its bid under invitation for bids (IFB) No. 004884 for the purchase of timber from the Huron Manistee National Forests, Michigan.

Hintz's high bid was accompanied by a bid deposit in the form of a Hintz and Hintz company check. The IFB required that bid deposits be in the form of a certified check, bank draft, cashier's check or bank money order. The Forest Service asks whether it properly rejected Hintz's bid since it was not accompanied by the form of a bid guarantee required under the invitation or whether Hintz's submission of a company check as a bid guarantee should be considered a minor informality and waived. The sale has not been awarded pending our decision.

Hintz argues that its bid was improperly rejected. Hintz maintains that the fact that its bid was accompanied by its company check instead of a certified check is a "mere technicality," not requiring rejection of its bid. In any event, the firm contends that its bid should be accepted since the Forest Service cashed its check.

The IFB required a bid guarantee in the proper form, and defined such form as a certified check, bank draft, cashier's

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check or bank money order. The IFB further advised bidders that "the failure to submit an acceptable bid guarantee will require rejection of the bid." Thus, bidders were advised that an acceptable bid guarantee was a material requirement under the IFB. An uncertified check, such as the one submitted by Hintz, is subject to insufficient funds or stop payment orders and does not represent the firm commitment required to form a binding contract. See Douglas M. Andrews, B-218687, May 17, 1985, 85-1 C.P.D. ¶ 155. This is so even where, as here, it has been ascertained that sufficient funds are present. Edward D. Griffith, B-188978, Aug. 19, 1977, 77-2 C.P.D. ¶ 155. Because the bid guarantee requirement is a material part of the IFB, it cannot be waived and the submission of a bid guarantee in the form of an uncertified check rather than in the form of a firm commitment as defined by the invitation renders the bid nonresponsive. Edward D. Griffith, B-188978, supra.

Concerning Hintz's contention that its bid should be accepted because the Forest Service cashed its check, we point out that the responsiveness of a bid must be determined solely from the bid documents at the time of bid opening and a nonresponsive bid cannot be made responsive by actions taken after bid opening. See Minority Enterprises, Inc., B-216667, Jan. 18, 1985, 85-1 C.P.D. ¶ 57; S&S Contracting, B-214927, June 26, 1984, 84-1 C.P.D. ¶ 670. In this regard, the Forest Service has advised us that it inadvertently deposited Hintz's check; however, the amount of the bid deposit is being refunded to Hintz.

Accordingly, the Forest Service properly rejected Hintz's bid as nonresponsive.

*for* Seymour Efros  
Harry R. Van Cleve  
General Counsel