



Comptroller General  
of the United States  
Washington, D.C. 20548

Bednarz  
14-1169

## Decision

**Matter of:** Tri-Tech International, Inc.

**File:** B-244289

**Date:** June 13, 1991

James H. Payne for the protester.  
Christine F. Bednarz, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

### DIGEST

1. The agency properly rejected a low bid as nonresponsive, where the bidder furnished a bid guarantee in the form of an uncertified company check.
2. The execution of performance and payment bonds after bid opening cannot make responsive a bid accompanied by an inadequate bid guarantee.

### DECISION

Tri-Tech International, Inc. protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. N62477-90-B-1003, issued by the Department of the Navy, Naval Facilities Engineering Command, Quantico, Virginia. The Navy rejected Tri-Tech's bid because it included an uncertified company check as its bid guarantee.

We dismiss the protest.

Tri-Tech furnished an uncertified company check as bid security on the March 19, 1991, bid opening, stating that a recent change in bonding companies prevented the production of a bid bond. On April 24, 1991, Tri-Tech executed both performance and payment bonds. On May 1, 1991, the Navy rejected Tri-Tech's bid as nonresponsive for failure to include a sufficient bid guarantee and returned the company check.

Tri-Tech disputes the determination that it is nonresponsive and characterizes the bid bond requirement as a "technicality," which the Navy could have waived. Alternatively, Tri-Tech asserts that it cured any defect in its bid guarantee by executing the performance and payment bonds after bid opening.

The solicitation's bid guarantee clause advised bidders that failure to furnish a bid guarantee in the proper form and amount by the time set for bid opening might result in rejection of the bid. In particular, the clause required bidders to furnish a bid guarantee "in the form of a firm commitment," such as a bid bond, postal money order, certified check, cashier's check, or an irrevocable letter of credit. Federal Acquisition Regulation (FAR) § 52.228-1. Uncertified company checks, which are subject to dishonor through such events as insufficient funds or stop payment orders, do not represent firm commitments as required by the bid guarantee clause. Forbes Mfg. Inc., B-237806, Mar. 12, 1990, 90-1 CPD ¶ 267.

The failure of the bidder to present an adequate bid guarantee at the time of bid opening renders the bid nonresponsive. Building Sys. Contractors, Inc., B-219416, July 9, 1985, 85-2 CPD ¶ 36; Colorado Elevator Serv., Inc., B-206950.2, May 6, 1982, 82-1 CPD ¶ 434. Noncompliance with the bid guarantee requirement can only be waived under those limited conditions specified in FAR § 28-101.4, none of which are present here. Building Sys. Contractors, Inc., B-219416, supra. Where the bid as submitted lacks some material element, such as an acceptable bid security, which makes it nonresponsive, the bidder may not cure that defect by submitting a correcting document to the agency after bids have been opened. Id.

The protest is dismissed.

  
James A. Spangenberg  
Assistant General Counsel