



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Energy Savers Store, Inc.

File: B-246140

Date: February 6, 1992

Jay Johnston for the protester.
Ann L. Giddings, Esq., and Cynthia S. Guill, Esq.,
Department of the Navy, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Cashier's check is not an acceptable form of bid guarantee on Department of Defense construction solicitation where the solicitation specifically limits, as permitted by regulation, acceptable types of bid guarantees to bid bonds or public debt obligations of the United States.

DECISION

Energy Savers Store, Inc. protests the rejection of its bid submitted in response to invitation for bids (IFB) No. N62477-90-B-1193, issued by the Department of the Navy for replacement of exterior windows and roof dormer louvers at the Marine Corps Combat Development Command, Quantico, Virginia. The Navy determined the bid was nonresponsive because the guarantee submitted did not conform to the solicitation's requirements.

We deny the protest.

The IFB required a bid guarantee in the amount of 20 percent of the bid price. At bid opening on September 16, 1991, Energy Savers submitted the low bid of \$38,298 accompanied by a cashier's check in the amount of \$7,659.60 as its bid guarantee. The next low bid was \$45,198.

The Navy determined that Energy Savers' bid was nonresponsive because a cashier's check was not an acceptable form of bid guarantee as specified in the IFB. Energy Savers contends that a cashier's check is an

acceptable bid guarantee, pointing out that the Federal Acquisition Regulation (FAR) § 52.228-1 lists a cashier's check as an acceptable form of bid guarantee. We agree that the Navy properly rejected the bid because, in this case, a cashier's check was not a permissible bid guarantee under this IFB.

As a general rule, where a bid guarantee is required, the bidder may provide any type of bid guarantee, FAR § 28.101-1; Halki Paint Contractors, Inc., B-244739, Nov. 18, 1991, 91-2 CPD ¶ 467, and, as the protester correctly notes, FAR § 52.228-1 lists a cashier's check as an acceptable form of bid guarantee. However, procuring agencies also have the discretion under the FAR to specify that only "separate bid bonds" are acceptable for construction contracts. FAR § 28.101-1(b); Halki Paint Contractors, Inc., supra. The Department of Defense (DOD) exercised the discretion permitted by FAR § 28.101-1(b) in promulgating Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 228.101-1, which provides that only separate bid bonds and specified types of public debt obligations may be provided as bid guarantees for DOD construction contracts.¹ Bidders are put on notice of this requirement by the inclusion of DFARS § 252.228-7007 in the IFB, which states in pertinent part:

"(a) The Offeror (Bidder) shall furnish a separate bid bond, or United States bonds, Treasury notes or other public dept obligations of the United States, in the proper form and amount, by the time set for opening of bids. Failure to do so may be cause for rejection of the bid. . . ."

¹The stated reason for limiting the acceptable types of bid guarantees was to avoid the additional risk and burden of safekeeping, and returning to the contractor, assets furnished as security. 52 Fed. Reg. 48,549 (1987). We note that the revised DFARS, effective December 31, 1991, do not contain sections 228.101-1 and 252.228-7007. 56 Fed. Reg. 36,280 (1991); 55 Fed. Reg. 39,788 (1990). DOD states that it considered FAR § 28.101-1 to be sufficient to address bid guarantees related to construction contracts. Id. It appears that the effect of this change will be to permit all types of separate bid guarantees, including cashier's checks, to be acceptable under solicitations issued after December 31, 1991. FAR §§ 28.101-1(b); 28.101-3(b); and 52.228-1.

Since a cashier's check is not listed as an acceptable bid guarantee for this IFB, Energy Savers' bid was properly rejected as nonresponsive. Halki Paint Contractors, Inc., supra. In view of the authority that has been granted DOD to require separate bid bonds on construction contracts, the fact that cashier's checks are ordinarily acceptable security is irrelevant. Id.

The protester also argues that, in regard to furnishing the proper form of bid security, the language of DFARS § 252.228-7007, is permissive and does not require rejection of its bid. When required by a solicitation, however, a bid bond is a material part of the bid which must be furnished by bid opening. Trail-Blazer Constr., B-244144; B-244145, June 6, 1991, 91-1 CPD ¶ 543. Failure to furnish a bid guarantee in accordance with the solicitation's terms requires rejection of the bid as nonresponsive. Id.

The protest is denied.



for James F. Hinchman
General Counsel