

088004

DECISION



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

40360

FILE: B-180104

DATE: January 21, 1974

MATTER OF: Lemont Shipbuilding and Repair Company

DIGEST: After award protest that liquidated damages provision in IFB for repair and storage of Navy vessels was ambiguous is untimely because under section 20.2 of Interim Bid Protest Procedures and Standards protest against provision apparent prior to bid opening must be protested before bid opening.

Protest against rejection of bid as nonresponsive to IFB for repair and storage of Navy vessels because of qualifying language in bid is untimely under section 20.2 of Interim Bid Protest Procedures and Standards because filed after 5 days from date basis for protest known.

Invitation for bids (IFB) N62990-74-B-1, issued by the Supervisor of Shipbuilding (SUPSHIP) for repair and storage of Navy vessels, was opened on November 1, 1973. Lemont Shipbuilding and Repair Company (Lemont) was the low bidder but included a statement in its bid that the liquidated damages provision in the IFB was "unacceptable * * * to be negotiated." Consequently, on November 8, 1973, SUPSHIP wrote Lemont that its low bid had been rejected as nonresponsive and award made to Peterson Builders, Inc. On November 9, 1973, Lemont telephoned SUPSHIP to ascertain if any action had been taken on the IFB. Lemont was informed that its bid had been determined nonresponsive and that a letter to that effect had already been sent. This letter was received by Lemont on November 12, 1973. A November 13, 1973, telephone conference between the SUPSHIP and the Contract Negotiator and representatives of Lemont did not resolve the matter to Lemont's satisfaction. At the conclusion of the conference, Lemont indicated that it would seriously consider filing a protest. Thereafter, Lemont protested to our Office by telegram which we received on November 20, 1973.

It is protested that Lemont was the low responsive, responsible bidder. It is further protested that the liquidated damages provision was ambiguous. In view of this alleged ambiguity, it is asserted that the statement in Lemont's bid concerning the liquidated damages provision should be waived because it does "not significantly affect the work to be done."

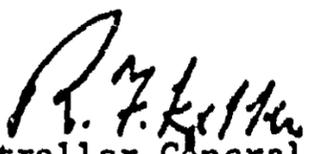
Section 20.2(a) of our Interim Bid Protest Procedures and Standards, applicable to the protest, provides:

"* * * Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals. In other cases, bid protests shall be filed not later than 5 days after the basis for protest is known or should have been known, whichever is earlier. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely. The term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be and protestors are, therefore, cautioned that protests should be transmitted or delivered in that manner which will assure earliest receipt."

Concerning the portion of the protest that the liquidated damages provision was ambiguous, the provision was apparent prior to bid opening. Therefore, any protest in that regard must have been filed before bid opening in order to be timely. We also regard the remainder of the protest as untimely under that portion of section 20.2(a) providing that in other cases the protest must be filed not later than 5 days after the basis for protest was known or should have been known. The basis for the protest was known, or should have been known, after the November 9, 1973, telephone conversation, or at least by November 12, 1973, with the receipt of the letter notifying Lemont of the rejection of its bid. We note that while Lemont telephoned the SUPSHIP on November 13, 1973, it did not file a protest with the agency.

Since the protest telegram was not received in our Office until November 20, 1973, or at least 6 days after the date the basis of the protest was known to Lemont, the protest is untimely and will not be considered.

Deputy


Comptroller General
of the United States