

DECISION

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

50596

FILE: B-183151

DATE: February 28, 1975 95293

MATTER OF: Omega Construction Co., Inc.

DIGEST:

Protest of rejection of bid as nonresponsive due to defective bid bond and against consequential issuance of new solicitation is untimely under section 20.2(a) of Bid Protest Procedures and Standards, since it was not filed within 5 working days after protester knew basis for rejection of bid or became aware of issuance of resolicitation.

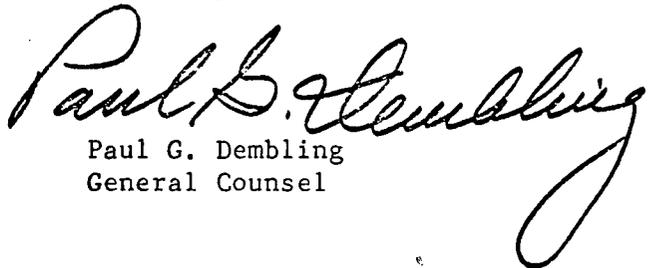
By letter dated January 31, 1975, the Omega Construction Company, Inc. (Omega), protested the rejection of its bid under invitation for bids (IFB) F20612-74-B-0039 and the IFB's subsequent cancellation and the issuance of IFB F20612-75-B-0013 by the United States Air Force, Kincheloe Air Force Base, Kinross, Michigan, for the construction of garage buildings.

Omega's low bid under the initial IFB on September 23, 1974, exceeded the available funds for this project, and additional funds had to be requested from the Office of the Secretary of Defense (OSD). Also, a wage rate extension had to be requested from the Labor Relations Board. OSD approved the additional funding and the project was cleared for award on November 18, 1974, just prior to reexpiration of the wage rates in effect. However, it was then apparently discovered that Omega's bid bond was defective because it named a different legal entity than the bidder designated in the bid. Consequently, it was determined that Omega's bid was nonresponsive and had to be rejected. Omega was notified that its bid bond was defective in November 1974. It was then decided to cancel the initial IFB and issue IFB F20612-75-B-0013. We have been informed that this resolicitation was issued on December 10, 1974, with bid opening set for January 29, 1975. Omega was not the low bidder under the resolicitation.

Omega contends that the rejection of its bid under the initial IFB as nonresponsive was arbitrary, since its bid bond was not defective. Omega states that its competitive position on the resolicitation was consequently destroyed.

However, section 20.2(a) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(a) (1974)) states in pertinent part that " * * * protests shall be filed no later than 5 days after the basis for protest is known * * * ." Since Omega protested the rejection of its bid to our Office after it had learned that its bid was not low on the resolicitation, its protest must be considered untimely, inasmuch as it did not protest within 5 working days after it knew the basis for the rejection of its bid under the initial IFB. Moreover, Omega's protest of the issuance of the resolicitation is also untimely, since it should have been protested within 5 working days after its issuance.

Therefore, we will not consider this protest on the merits.


Paul G. Dembling
General Counsel