

**DECISION**

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

50920

FILE: B-184319

DATE: July 18, 1975

MATTER OF: Kisco Company, Incorporated

47363

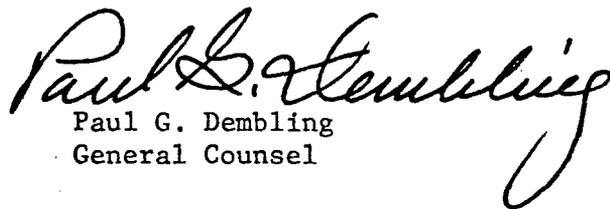
**DIGEST:**

1. Protest alleging improperly drafted invitation, filed after bid opening, is untimely under section 20.2(b)(1) of Bid Protest Procedures which requires that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening be filed prior to bid opening.
2. Allegation that low bidder is nonresponsible for financial reasons will not be considered since practice of reviewing bid protests involving contracting officer's affirmative determination of responsibility has been discontinued absent showing of fraud in finding or where solicitation contains definitive responsibility criteria which allegedly have not been applied.

This is a protest by Kisco Company, Incorporated (Kisco), against award to the low bidder under invitation for bids (IFB) No. DAAE07-75-B-0059, issued by the United States Army Tank Automotive Command. Kisco contends that: (1) the IFB permits the bidder to quote a price for the item based upon the bidders' own theory of the material necessary and the method of producing the item without any governmental design and price is therefore not the determinative issue; and (2) the low bidder is not a responsible bidder for financial reasons.

As concerns the first contention, i.e., that the IFB was improperly drafted, Kisco indicates that bids were opened on June 17, 1975. Kisco's protest mailgram to our Office, transmitted on June 26, 1975, was not received until June 27, 1975. Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in pertinent part that "Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening \* \* \* shall be filed prior to bid opening \* \* \*." Therefore, this contention is untimely and will not be considered by our Office on its merits.

With regard to Kisco's second contention, this Office does not review protests against affirmative determinations of responsibility, unless, unlike here, either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974). Although we will consider protests against determinations of nonresponsibility to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform.

  
Paul G. Dembling  
General Counsel