

D. Bellard, Sheriff

DECISION



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

1075

FILE: B-192357

DATE: October 2, 1978

MATTER OF: Sheriff Construction Company, Inc.

DIGEST:

Where basis for protest of proposed award of resolicited requirement is invalidity of cancellation of initial invitation under which protester was low bidder, protest is untimely if filed in GAO more than 10 days after protester first had knowledge of cancellation.

Invitation for Bids SCS-4-GA-78 (IFB-4), issued by the Soil Conservation Service, United States Department of Agriculture (SCS), invited bids for emergency watershed protection work in Hall County, Georgia.

Three bids were opened on May 1, 1978. Sheriff Construction Company, Inc. (Sheriff), was low bidder. By letter dated May 8, 1978, the contracting officer notified all parties that the IFB would be canceled and the requirement readvertised, stating that numerous changes in the work would result in changed quantities and drawings.

The requirement was readvertised in IFB SCS-13-GA-78 (IFB-13), on which Sheriff also bid. Bids for the second solicitation were opened on June 12, 1978, and Sheriff was the second low bidder. On June 14, 1978, Sheriff protested to SCS. On June 26, 1978, the contracting officer denied the protest and in a letter received in our Office on July 10, 1978, Sheriff seeks review of the adverse agency decision, protesting the proposed award of IFB-13 to Triple A Trucking Company, and the failure of SCS to award IFB-4 to Sheriff.

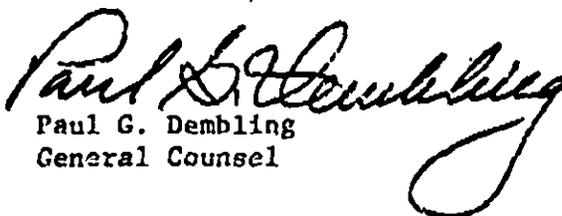
Sheriff contends that a comparison of the bidder's copy of IFB-4 with IFB-13 shows no significant changes in the drawings, thus concluding that no design change resulted, and that the change in quantity was covered within the 25 percent range of Special Provision No. 12 of IFB-4. Sheriff further contends that the basis for cancellation of IFB-4 is not one of the grounds listed in section 1-2.404-1(b) of the Federal Procurement Regulations.

It is obvious that the basis for the protest is the failure of SCS to award a contract to Sheriff as low bidder under IFB-4 and the cancellation of that solicitation. These facts were communicated to Sheriff on May 8, 1978, by SCS.

Our Bid Protest Procedures provide that protests "shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. 20.2(b)(2) (1978). The record is clear that Sheriff filed its protest with our Office more than 10 days after it was aware of the basis for its protest. Midwest Specialties, B-190131, September 26, 1977, 77-2 CPD 228.

We cannot see the logic of waiting for the resolicitation before pressing a protest. A protester cannot accept cancellation of a solicitation by responding to a resolicitation and then protest the initial solicitation after learning he was not entitled to award upon the resolicitation. See Cessna Aircraft Company; Beech Aircraft Corporation, B-180913, August 12, 1974, 74-2 CPD 91.

Sheriff's protest, therefore, is untimely and not for consideration on the merits.


Paul G. Dembling
General Counsel