

DECISION



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

13466

PL-11
Mr. Weiskopf

PL-04413

FILE: B-197261

DATE: April 18, 1980

MATTER OF: Abreen Corporation ✓

DIGEST:

1. Potential bidder's request for review of procurement procedures need not contain the exact words of protest to be characterized as such so long as the request lodges specific exceptions. Therefore, where firm brought "discrepancies in the bid documents which * * * should be clarified" to the agency's attention prior to bid opening, and then protested to GAO within 10 days after bid opening without corrective action, it has filed a timely protest.
2. Protest by general construction contractor who did not bid on IFB for construction of office building allegedly because with respect to one component of the building the specifications described product proprietary to one manufacturer, is denied, because even if allegations were true, protester was not placed at competitive disadvantage in relation to six other general contractors who submitted bids.

Abreen Corporation (Abreen) protests the award of any contract under invitation for bids (IFB) No. DACA51-80-B-0006 for the construction of an office building at Hanscom Air Force Base, Bedford, Massachusetts. The IFB, issued by the Army Corps of Engineers (Corps) on November 13, 1979, scheduled bid opening on December 18, 1979.

[Protest Against Contract Award]

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On December 14, the Corps received a letter from Abreen which stated in part:

"We wish to bring to your attention several discrepancies in the bid documents of the above project which we believe should be clarified by addenda prior to the bid."

Abreen alleged a small discrepancy between the schedule and the drawings as to whether the contractor must provide a rubber mat for a vestibule floor, and also stated that it had been advised that the specifications for the windows and aluminum entrances were copied from the specifications of a particular manufacturer and were only available from that manufacturer. Abreen concluded:

"We believe, therefore, that * * * the rules governing the procurement of such proprietary items have not been followed. In the event we are incorrect in our assumption that the specifications are proprietary, we ask that the names of other window manufacturers who can meet this specification be given to us."

"We respectfully request that these * * * items be clarified prior to the bid."

Although the project engineer spoke with Abreen the day before bid opening, apparently the Corps did not clarify these items to Abreen's satisfaction, and Abreen did not submit a bid. Eight days after the December 18 bid opening, Abreen filed a protest with this Office raising the previously stated discrepancies and an additional ground for protest - that the IFB improperly contained a labor stipulation which requires that when the owners or officers of subcontracting firms perform the work of laborers or mechanics, the prime contractors must pay them at a rate of not less than the prevailing wage determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. § 276(a)(1976)) for the hours worked in the specific classification.

before our Office consists of contradictory statements by the protester and the contracting agency, the protester has failed to carry the burden of affirmatively proving its assertions. Varian Graphics, B-192698, January 22, 1979, 79-1 CPD 37.

We now turn to Abreen's remaining contentions: that the specifications were defective in that there was a conflict as to whether a rubber mat was to cover the floor of one vestibule and that the specifications for the windows and aluminum entrances were proprietary to one manufacturer. Abreen contends that the ambiguity as to whether the mat was required and the excessively high price quoted to it by the window manufacturer prevented it from formulating a "reasonable" bid. It therefore did not bid.

The Corps concedes that the IFB has conflicting provisions as to whether a rubber mat was required in one vestibule. However, the Corps estimates the cost of the mat at \$342 and contends that such a small amount would have only a de minimus effect on the bidding for this project. We agree with the Corps, and do not see how this discrepancy prejudiced the protester or prevented it from submitting a bid.

We do not believe Abreen has established that the windows are available from only one source and we have not received a protest from any window manufacturer to that effect. Rather, Abreen is a general construction contractor whose contention is that it was able to obtain only one subcontractor quotation for the windows and that quotation was at a price it considered unreasonably high. However, Abreen has not shown that the window specifications placed Abreen at a competitive disadvantage vis-a-vis the six other general contractors who submitted bids. Even if it is conceded that the required windows were available from a single source, the effect of the specifications would be only to restrict any potential general contractors' choice of subcontractors to that source. In this regard, each bidder would be in the same competitive position as any other.

We believe competition was obtained in this procurement and that the specifications did not place Abreen at a disadvantage in relation to its competitors. In this regard, we note that the rubber mat and the windows are but a minimal part of a larger project: the construction of a three-story, steel-framed, brick-faced office building, together with a 540-car parking lot and landscaping. The record indicates that the items in question represent less than 10 percent of the cost of the entire project and may well be less than five percent. The protest is therefore denied.

Milton J. Jordan

For The Comptroller General
of the United States