

C. Barbash  
Proc I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

14396

*[Protest Against Bid Rejection as Nonresponsive]*

FILE: B-195305

DATE: July 28, 1980

MATTER OF: Slack Associates, Inc. *DLG04976*

**DIGEST:**

1. Untimely protest will not be considered as "significant issue" exception where issue involved has been considered in prior GAO decisions.
2. General compliance offer does not cure omission to supply descriptive literature required by IFB as necessary element in evaluation to determine if product offered meets specifications.
3. Subsequent delay in performance by contractor does not retroactively affect validity of sole-source award made based on determination that contractor would be able to perform as required.
4. Request for investigation regarding questions raised in connection with procurement apart from protest is denied, since review under Bid Protest Procedures is limited to determination whether rejection of offers and awards made are proper.

Slack Associates, Inc. (Slack), protests that the low bid it submitted under invitation for bids (IFB) No. N00421-79-B-0118, issued by the Supply Department, Naval Air Station, Patuxent River, Maryland, for closed-circuit television camera supports, should not have been rejected and that the award made to Calcor Space Facility, Inc. (Calcor), following the award to Calcor under the IFB and subsequent termination for convenience, should not have been on a sole-source basis. *AGE01101* *DLG04977*

*011425 112872*

Slack's bid was rejected as nonresponsive for failing to provide any data under the IFB descriptive literature requirement. Slack admits that under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), its protest after the rejection of its bid that the descriptive literature requirement is improper is untimely. Nevertheless, Slack contends that we should consider the protest because the descriptive literature requirement is contrary to prior decisions of our Office. However, a previously decided issue is not considered to fall within the "significant issue" exception to our timeliness requirements. A.R.&S. Enterprises, Inc., B-197303, July 8, 1980, 80-2 CPD \_\_\_\_. Therefore, this untimely presented issue is not for consideration in this case.

Slack also complains that [failure to furnish the required descriptive material should have been waived by the contracting officer because the specifications were so comprehensive that no further information was necessary and by signing the bid without exception it agreed to perform in accordance with the specifications.] This aspect of the protest will be considered because it is timely. Delta Electronic Control Corporation, B-188796, November 28, 1977, 77-2 CPD 412.

Slack takes the position that the contracting officer is interpreting the descriptive literature clause in an overly restrictive manner because in one place in his report the contracting officer takes the position that the descriptive literature requirement could only be satisfied by "complete" submission of descriptive literature, but yet in another place concedes that it would have been sufficient to furnish data for the electrical requirement of the television supports without furnishing data as to the mechanical requirements. Since the contracting officer concedes that if information as to the electrical requirement would have been furnished that would have been sufficient, we find that the contracting officer's approach is liberal rather than restrictive.

The IFB specification states:

"Electrical. Camera support shall incorporate the following electrical features:

"a. Lightning protection circuitry."

The contracting officer states that the IFB electrical drawing depicts a "box" standing for the functional use, that it is left to the bidder to determine the design and performance characteristics that will achieve the protection needed and that descriptive literature is required to demonstrate that the "box" will provide the necessary protection. However, Slack contends that it is not required to furnish the "box" because it is represented by a broken line and is marked "REF" which ordinarily means that it is not to be contractor furnished. Thus, Slack contends that it did not have to furnish any information on this aspect and the failure to do so should have been waived.

However, since the specification as quoted above states that the camera support shall incorporate lightning protection circuitry, it is clear that this is to be contractor furnished instead of Government furnished. Regardless of whether the IFB specifications were sufficiently detailed in other respects so that the failure to provide information with regard to other respects could have been waived, the fact remains that the specifications were not detailed for the aspect in issue. Therefore, since the descriptive literature clause states that the data is required to establish for purposes of bid evaluation and award the details of what the bidder proposes to furnish as to design and performance characteristics and that the failure of the descriptive literature to show that the product conforms to the specifications will require rejection of the bid, the rejection for failing to furnish any descriptive literature in this case was proper. A general compliance offer does not cure an omission to supply descriptive literature required by the IFB as a necessary element in the evaluation to determine if the product offered

meets the specifications. 36 Comp. Gen. 415 (1956).  
See also 41 Comp. Gen. 192 and 348 (1961).

Although not included in the original letter of rejection of the Slack bid, the contracting agency also contends that the bid was nonresponsive because of the method of pricing used by Slack in the bid. Since the bid was otherwise nonresponsive, that issue is academic and will not be considered. Moreover, we do not find it necessary to consider Slack's contention that the Calcor bid should not have been accepted since the contracting agency determined that the award to Calcor was improper and terminated it, thereby rendering that aspect academic also.

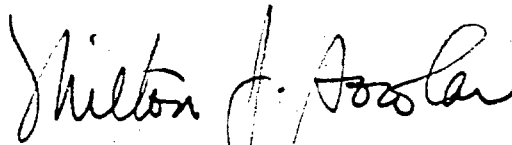
Slack contends that [after the termination, the contracting agency should not have made an award to Calcor on a sole-source basis.] The sole-source award was for a reduced quantity to satisfy an urgent need in the interim before a new IFB could be competed and an award made under it. Although Slack disagrees with some of the reasons relied on by the agency for the sole-source award, one of the reasons was that Calcor was determined to be the only manufacturer that would have access to materials and experience that would enable it to begin delivery on January 2, 1980, and Slack indicates that Slack could have begun delivery about a month later. However, Slack questions the propriety of the determination with respect to Calcor since it states that as of March 2, 1980, no supports had been delivered by Calcor.

Whether Calcor was capable of delivering on time was a matter of Calcor's responsibility, an affirmative determination which our Office ordinarily does not review. X-Tyal International Corp., B-198802, May 22, 1980, 80-1 CPD 355. Further, the subsequent delay in performance does not retroactively affect the validity of the award made based on the determination that Calcor would be able to perform as required.

[Slack also requested that an investigation be made regarding related questions it has raised in connection with the procurement apart from the protest.]

However, our review under the bid protest procedures is limited to determining whether rejections of offers and awards made are proper. Moreover, we do not conduct investigations to establish the validity of protester's speculations, since it is the protester's burden to affirmatively prove its case. Logicon, Inc., B-196105, March 25, 1980, 80-1 CPD 218.

The protest is denied in part and dismissed in part.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General  
of the United States