

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-208567**DATE:** January 17, 1983**MATTER OF:** Tri-States Service Company**DIGEST:**

1. The award of a contract cannot be set aside at the insistence of the contractor on the ground that it was not entitled to award since it was nonresponsible. This is a ground available to those injured by award action, not to the party which benefits by it.
2. An allegation that the IFB is defective, based on the language of the IFB, is untimely when filed at GAO approximately 1 year after bid opening. See 4 C.F.R. § 21.2(b)(1) (1982).
3. GAO will not consider contractor's request for rescission of its contract due to mistake in bid alleged after award, since request constitutes claim "relating to" contract which, in accordance with Contract Disputes Act of 1978, must be filed with contracting officer.
4. Whether to exercise an option is a matter of contract administration outside the ambit of the Bid Protest Procedures.

Tri-States Service Company (Tri-States) protests the Department of the Army's (Army) November 20, 1981, award to Tri-States of contract No. DAKF40-82-C-0180 for the operation of the textile repair facility at Fort Bragg, North Carolina.

Based on the following, we dismiss the protest.

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Essentially, Tri-States contends that the contracting officer (CO) made a fraudulent affirmative determination of responsibility because Tri-States was not responsible and unable to perform the services as specified in its bid. Additionally, Tri-States argues that the solicitation was defective and that is an additional reason why the award was illegal. Furthermore, Tri-States submits that it made a mistake in the verification of the correctness of its bid and that the CO was aware of the mistake. It is Tri-States' belief that the contract should be rescinded. Tri-States also argues that the Army should not exercise the option of the contract.

In regard to Tri-States argument that it is nonresponsible, we held in 49 Comp. Gen. 761 (1970) that the award of a contract cannot be set aside at the insistence of the contractor on the ground that it was not entitled to the award. This is a ground available only to those injured by the award action because they contend an improper award deprived them of the award to which they were entitled. 49 Comp. Gen., supra, at 764. Since Tri-States was the awardee, this ground is not available to it. Therefore, this aspect of Tri-States' protest is dismissed.

With respect to Tri-States' allegation that the solicitation was defective and its questioning of the CO's conduct during the affirmative determination of responsibility, we find both to be untimely. Our Bid Protest Procedures, 4 C.F.R. part 21 (1982), require that a protest based upon alleged improprieties in an IFB which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1982).

Tri-States' arguments concerning the defectiveness of the IFB are essentially based on the language of the IFB. Therefore, this aspect of the protest should have been filed prior to the August 18, 1981, bid opening. However, it was not filed until August 10, 1982, and is untimely.

We also decline to consider Tri-States' argument that because of a mistake in the verification of its bid and the CO's awareness of the mistake, its contract should be rescinded. Our Office generally does not consider matters

which are for resolution by a contracting officer under the Disputes clause of a Government contract. See, e.g., Consolidated Maintenance Company, B-197009, December 19, 1979, 79-2 CPD 426. The Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (Supp. III, 1979), requires that all claims "relating to" a contract be filed with the contracting officer for a decision. 41 U.S.C. § 605(a). Specifically, we have held that mistake claims alleged after award, as here, are ones relating to a contract and should be processed in accordance with the provisions of the act. Broken Lance Enterprises, B-202085, August 21, 1981, 81-2 CPD 164. In this connection, we note that by letter dated May 28, 1982, Tri-States made such a claim to the CO.

Tri-States' final argument concerning the exercise of the option is not for consideration by our Office. The decision whether to exercise an option is a matter of contract administration outside the ambit of our Bid Protest Procedures. Oscar Holmes & Sons Trucking Company, Inc., B-197080, January 15, 1980, 80-1 CPD 47.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel