

DECISION



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

FILE: B-211966

DATE: August 11, 1983

MATTER OF: Lazos Construction Company, Inc.

DIGEST:

1. Protest alleging that IFB is defective because it should not have contained subcontractor listing requirement is dismissed as untimely where filed after bid opening. Section 21.2(b)(1) of GAO Bid Protest Procedures requires protest based upon alleged solicitation defects which were apparent before bid opening to be filed before bid opening.
2. Where IFB contained requirement that bids contain list of potential subcontractors or be rejected as nonresponsive, failure to list potential subcontractors is a material defect which is not for waiver. Therefore, rejection of bid which did not list potential subcontractors or indicate that bidder intended to perform all work itself was proper.

Lazos Construction Company, Inc. (Lazos), protests the Immigration and Naturalization Service's rejection of its bid submitted in response to invitation for bids (IFB) No. CO-18-83 for the construction of a United States Border Patrol Station. Lazos' bid was rejected as nonresponsive because it did not contain a list of the names of any subcontractors Lazos intended to use to perform the work as required under the IFB. Lazos contends that the IFB should not have contained a subcontractor listing clause because, under section 5-2.202-51(c) of the General Services Administration Procurement Regulations (GSAPR) (41 C.F.R. part 5 (1982)), subcontractor listing clauses are not to be contained in solicitations for construction, such as the present one, which are not estimated to exceed \$1 million. Lazos also contends that the IFB was defective because the subcontractor listing clause included therein did not use

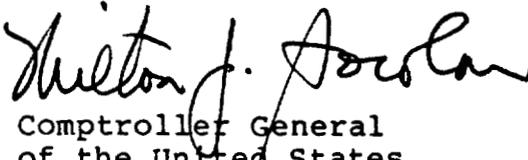
the exact language set forth in GSAPR § 5-2.202-51(f) which contains the model subcontractor listing clause and because it did not contain any space for listing subcontractor names.

The protest is dismissed in part and denied in part.

Under our Bid Protest Procedures, a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be considered on its merits. 4 C.F.R. § 21.2(b)(1) (1983). Lazos' protest essentially is based upon the belief that the inclusion of the subcontractor listing clause was improper. This should have been obvious to Lazos upon a careful reading of the solicitation. Since the alleged defects were apparent to Lazos before bid opening, they should have been protested before bid opening in accord with section 21.2(b)(1) of our Bid Protest Procedures. See Elevator Sales & Service, Inc., B-193519, February 13, 1979 79-1 CPD 102. Instead, Lazos waited until after bids were opened and its bid was rejected to protest to our Office; there is nothing in the record to show that Lazos protested to the contracting agency at any time. Accordingly, these issues of protest are untimely and will not be considered on their merits.

The next issue is whether Lazos' bid was properly rejected. The IFB contained a clause entitled, "Listing of Subcontractors," in its Special Conditions section. The clause stated, among other things, that "The bidder shall submit the name and address of the individuals or firms with whom he proposes to contract for performance of work." The clause further directed that, "Failure to submit the list shall cause the bid to be considered nonresponsive." Lazos did not submit a subcontractor list with its bid nor did it indicate that it intended to perform each required category of work itself. In our opinion, notwithstanding Lazos' charge that the IFB did not contain space for a subcontractor list, the IFB's directions were very clear that a list had to be included or else a bid would be rejected as nonresponsive. Failure to comply with a provision of an IFB which requires bidders to list potential subcontractors is a material deviation from the directions of the IFB, and we have held that compliance with the listing requirement is essential to award of a construction contract and no

authority exists for waiver of that requirement. Piland Construction Company, Inc., B-183077, April 25, 1975, 75-1 CPD 262. Therefore, the Immigration and Naturalization Service's rejection of Lazos' bid was proper, and this portion of the protest is denied.

for 
Comptroller General
of the United States