

## DECISION



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

FILE: B-218203.2

DATE: March 21, 1985

MATTER OF: Siska Construction Company, Inc.--  
Request for Reconsideration

## DIGEST:

1. A protester has the burden of presenting sufficient evidence to establish its case. GAO does not conduct investigations to establish the validity of a protester's assertions.
2. Prior decision is affirmed on request for reconsideration where protester has not shown that the dismissal of its protests resulted from an error of law or fact.
3. Standard representations and certifications in the bid form such as affiliation and parent company data and certificate of independent pricing concern bidder responsibility, not the responsiveness of the bid, and, therefore, may be supplied after bid opening.
4. Absence of corporate seal on bid does not render bid nonresponsive since evidence of the signer's authority to bind the company may be presented after bid opening.
5. Bid bond is not invalid as a result of the absence of corporate seals of bidder and surety. Corporate seals may be furnished after bid opening. In addition, validity of bid bond is not affected by time limitation on authority of surety's representative where it is undisputed that surety's representative had authority to execute bid bond at the time the bond was executed.

Siska Construction Company, Inc. (Siska), requests that we reconsider our decision in Siska Construction Company, Inc., B-217066, Feb. 5, 1985, 85-1 C.P.D. ¶ \_\_\_\_, in which we dismissed Siska's protest of the rejection by the National Park Service, Department of the Interior, of Siska's bid under a small business set-aside procurement, for construction and renovation work at Lowell National

Historical Park, Massachusetts. Also, in our February 5, 1985, decision, we dismissed Siska's protest concerning the resolicitation for the construction and renovation project at Lowell National Park. In addition to its request for reconsideration, Siska also protests the propriety of the awardee's bid. Award was made to Trust Construction on February 6, 1985, and Siska timely protested.

We affirm our prior decision and deny Siska's protest concerning the awardee's bid.

In our earlier decision, we dismissed as untimely Siska's protest of the rejection of its bid under the original solicitation. In addition, we dismissed as untimely Siska's protest of the agency's extension of the period for receipt of bids under the readvertised procurement. We also dismissed Siska's objections to bids received under the resolicitation where Siska made unsupported general allegations regarding the size status of some of the other bidders and the receipt of multiple bids from allegedly affiliated bidders, without identifying those firms. We stated that we would not consider the merits of a protest in which the protester did not identify which bidders were the subject of its allegations and to which each allegation pertained. Furthermore, we stated that, generally, multiple bids from more than one commonly owned and/or controlled company are not improper unless such bids are prejudicial to the interests of the government or other bidders. Lastly, we advised Siska that our Office does not consider size status protests in view of the statutory authority of the Small Business Administration to make conclusive determinations on such matters.

In its request for reconsideration, Siska alleges that a number of circumstances suggest that we did not consider its protests on the merits because of pressure exerted by the congressman who represents the congressional district which includes Lowell National Park and the place of business of the awardee. Although the congressman did indicate to our Office his interest that the protests be resolved expeditiously, our decision, of course, was based solely on our evaluation of the legal merits of the case following a careful review of the entire written record submitted by Siska and the procuring agency. We determined that Siska's protests were properly for dismissal on the basis of the facts and for the reasons set forth in our decision.

Siska first asserts that an objective consideration of its protests would have included an investigation into its allegations and a request that Siska provide us with additional information or clarification if any was needed. It is well established, however, that it is the protester who bears the burden of proving its case. Our Office does not conduct investigations for the purpose of establishing the validity of a protester's assertions. A-1 Pure Ice Company, B-215215, Sept. 25, 1984, 84-2 C.P.D. ¶ 357. Moreover, our Bid Protest Procedures afford all parties reasonable notice and an opportunity to be heard. Our decision was based on the written record which included Siska's protest letters and its comments on the agency's report.

Siska next suggests that we dismissed as untimely its protests of the rejection of its bid and of the extension of the period for receipt of bids under the resolicitation as a device to avoid the merits of these issues. Siska contends that if these protests were in fact untimely, our Office would have dismissed them "months ago." The untimeliness of Siska's protests was not definitely established until our Office received the agency's report on Siska's protest, Siska's response to that report, and a copy of the agency's bidders mailing list used in the procurement. A proper determination of the timeliness issue required our examination of that information. Our dismissal of Siska's protests as untimely was based upon the chronology of events as established by the entire written record.

In this regard, our Bid Protest Procedures applicable to this case require that a request for reconsideration contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted. A request must specify any errors of law made or information not previously considered. 4 C.F.R. § 21.9(a) (1984). In its request for reconsideration, Siska has not pointed out any errors in our understanding of the chronology of pertinent events which affected the timeliness of its protests. Also, Siska has not pointed out any specific errors of law in the application of our timeliness rules, contained in our published procedures, to the facts of this case.

Siska also has objected to our dismissal as "untimely" of its protest against the bids submitted by other bidders on the basis that Siska cannot be expected "to foretell who the bidders might be and protest in advance of their

submitting a bid." This is a misstatement of our holding and of the facts of the case. Siska's letter alleging that other bidders were ineligible for award because they were affiliated or were not small business concerns was dated 2 days after bids were opened under the resolicitation. We did not require it, as Siska alleges, to "see into the future." Furthermore, our dismissal of this aspect of Siska's protest was not based on timeliness, but on the fact that Siska did not identify which bidders were the subject of its allegations.

Accordingly, our prior decision is affirmed.

In conjunction with its request for reconsideration, Siska has also raised a number of objections concerning the propriety of the awardee's bid. Siska questions the accuracy of the Certification of Independent Price Determination, see Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.203-2 (1984), and the statement concerning Parent Company and Identifying Data, see FAR, 48 C.F.R. § 52.214-8, in the awardee's bid, because certain information available to Siska suggests that the awardee is affiliated with another firm. Siska alleges that the awardee and another bidder, Devi Realty, operate from the same address, share the same telephone number, and that the president of Devi is the husband of a vice president of the awardee. These facts do not establish that the Certificate of Independent Price Determination was violated or that the awardee erroneously represented that it was not "owned or controlled" by a parent company.

The types of representations and certifications listed pertain to the bidder's responsibility and are not necessary to decide whether the bid is responsive. See Marathon Enterprises, Inc., B-213646, Dec. 14, 1983, 83-2 C.P.D. ¶ 690, and Dependable Janitorial Service and Supply, B-190956, Apr. 13, 1978, 78-1 C.P.D. ¶ 283. The failure of a bidder to complete such items may be corrected after bid opening as a minor irregularity. See Dependable Janitorial Service and Supply, B-190956, supra, 78-1 C.P.D. ¶ 283 at 3, and Southern Plate Glass Co., B-188872, Aug. 22, 1977, 77-2 C.P.D. ¶ 135. We note that the purpose of the Certification of Independent Price Determination is to assure that bidders do not collude to set prices or to restrict competition by inducing others not to bid. Protimex Corporation, B-204821, Mar. 16, 1982, 82-1 C.P.D. ¶ 247. We have stated that evidence that two bidders have

the same business address and may have common officers and directors does not establish that the bidders falsely certified in their bids that their bid prices were arrived at independently. See Aarid Van Lines, Inc., B-206080, Feb. 4, 1982, 82-1 C.P.D. ¶ 92. In any event, it is within the jurisdiction of the Attorney General and the federal courts, not our Office, to determine whether a criminal statute has been violated. Aarid Van Lines, Inc., B-206080, supra.

Siska also alleges that the awardee's bid should not have been accepted because the awardee's corporate seal did not appear on the Certificate of Authority to sign bids/proposals. The failure of a bidder to furnish a corporate seal with its bid may be waived or cured as a minor informality since the decisions of this Office provide that evidence of an agent's bidding authority may be furnished after bid opening. See Excavation Construction Incorporated, B-180553, May 31, 1974, 74-1 C.P.D. ¶ 292.

Siska further maintains that there were defects in the bid bond furnished with the awardee's bid which should have led to the bid's rejection. First, Siska states that the bid bond lacked the corporate seals of the awardee and the surety. The failure to affix corporate seals to the bid bond does not render the bid nonresponsive and such seals may be furnished after bid opening. See Securities Exchange Commission, B-184120, July 2, 1975, 75-2 C.P.D. ¶ 9, and B-164453, July 16, 1968. Last, Siska contends that the bid bond which was executed on November 28, 1984, had expired prior to the contract award in February 1985 since the power of attorney of the surety's attorney-in-fact expired on December 31, 1984. It is not disputed that the surety's attorney-in-fact had authority to execute the bid bond on the date it was executed. The termination of the attorney-in-fact's authority subsequent to the execution of the bid bond would not affect the validity of the bid bond since the rights and liabilities of the parties became fixed upon the execution of the bid bond. See B-178730, Nov. 6, 1973. The bid bond provided that the surety's obligation under the bid bond would not be affected by any extension of time for acceptance of the bid which the principal (the bidder) may grant to the government.

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Accordingly, we conclude that the bid bond submitted by the awardee was proper in form and did not render the bid nonresponsive.

*Harry R. Van Cleve*  
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General Counsel