



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Lundin Construction, Inc.

File: B-226209; B-226210

Date: February 20, 1987

DIGEST

1. Protest against rejection of protester's bid as excessively priced; agency's cost estimate; and agency's disclosure of elements of protester's bid, is dismissed as untimely when not filed within 10 working days after the protester knew the protest bases.
2. Protest against provisions of invitation for bids and agency's failure to set aside the procurement for small business concerns is dismissed as untimely when not filed until after the bid opening date.

DECISION

Lundin Construction, Inc. (Lundin), protests the rejection of its bid under invitation for bids (IFB) No. DACW37-86-B-0055 (-0055), issued by the Army Corps of Engineers (Corps) for flood control construction. Lundin also protests the cancellation of this IFB and the resolicitation of the requirement under IFB No. DACW37-87-B-0014 (-0014). Lundin requests reimbursement for the costs it incurred in submitting its bid and in pursuing this protest.

We dismiss the protest and we deny the claim.

IFB-0055 was issued as a small business set-aside. On bid opening day, September 24, 1986, the Corps received three bids, with Lundin submitting the low bid. The Corps decided to cancel the IFB and issue a new solicitation, however, because all three bids were 25 percent greater than the government estimate. Lundin received notice of this decision on October 10. Subsequently, on November 14, the Corps issued IFB-0014, also as a small business set-aside, although amendment No. 1 changed the solicitation to an unrestricted procurement. Bid opening was held on January 8, and although

038105

Lundin submitted a bid, the firm was not the low bidder. Lundin filed its protest with our Office on February 5, 1987.

Lundin protests that the bid it submitted in response to IFB-0055 was improperly rejected as excessive in price because the Corps' cost estimate, based on another construction project that Lundin asserts was significantly different than the present project in scope, location, and difficulty of performance, was too low. Lundin also complains that in the notice canceling the IFB, the Corps included an abstract of bids indicating each bidder's total bid and unit prices, which Lundin believes was improper.

Concerning IFB-0014, Lundin protests that with the exception of contract duration, this IFB is identical to IFB-0055, despite the Corps' earlier assurance to Lundin that the solicitation would be changed. Finally, Lundin protests the Corps' decision to change the solicitation from a small business set-aside to an unrestricted procurement.

We will not consider Lundin's protest that the Corps improperly rejected Lundin's bid under IFB-0055 as excessive in price; that the Corps cost estimate was too low; or that the Corps improperly released elements of Lundin's bid. Under our Bid Protest Regulations, a protest that involves other than an impropriety apparent from the face of the solicitation must be filed with our Office within 10 working days after the protester knows or should know the basis for its protest. 4 C.F.R. § 21.2(a)(2) (1986). According to Lundin, it learned the precise base for the Corps' cost estimate on September 24 during a discussion with the Corps. Also, Lundin learned that its total and unit bid prices were released^{1/} and that its bid was rejected on October 10, when it received notice that IFB-0055 was canceled. Since Lundin did not file its protest with our Office until February 4, 1987, these issues are untimely.

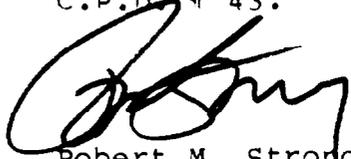
We will not consider the other protest bases raised by Lundin either. Under our Regulations, a protest based upon an alleged impropriety apparent from the face of an IFB must be filed before the time set for bid opening. 4 C.F.R. § 21.2(a)(1). Lundin's protest that IFB-0055 and IFB-0014 are essentially identical, and its protest that IFB-0014

^{1/} There generally is nothing wrong with such disclosure. Federal Acquisition Regulation, 48 C.F.R. § 14.403 (1986).

should have remained a small business set-aside, both concern improprieties apparent from the face of the second solicitation. Since they were not raised until after the January 8 bid opening day, they are untimely.

The protest is dismissed.

Since we have dismissed Lundin's protest as untimely, the firm is not entitled to reimbursement for its bid preparation costs or the costs it incurred in submitting this protest.
Brink Construction Co., B-219413, et al., July 11, 1985, 85-2
C.P.D. # 43.



Robert M. Strong
Deputy Associate
General Counsel