



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Contract West Roofing, Inc.

File: B-245715

Date: October 24, 1991

Patrick S. Hendrickson, Esq., Howell, Fetzer & Hendrickson, for the protester, Stephen J. Gary, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly rejected bid as nonresponsive due to bid bond in inadequate amount (5 percent) where solicitation did not specify amount is dismissed as untimely; absence of required amount for bid bond is an apparent solicitation defect that was required to be protested prior to bid opening, and protester could not simply make assumption as to acceptable amount in lieu of protesting, and then seek relief when agency did not act in the manner it assumed.

DECISION

Contract West Roofing, Inc. (CWR) protests the rejection of its bid under invitation for bids (IFB) No. DAHA42-91-B-0015, issued by the Department of the Army for replacement of the existing built-up roofing system at the Air National Guard Base, Salt Lake City, Utah. CWR complains that the solicitation requirement for submission of a bid bond did not specify the required amount and asserts that the Army's rejection of its bid as nonresponsive based on its inclusion of a 5 percent bond, instead of the 20 percent bond it desired, therefore was improper.

We dismiss the protest.

Under our Bid Protest Regulations, protests based upon alleged improprieties apparent on the face of a solicitation must be filed by the time designated for bid opening. 4 C.F.R. § 21.2(a)(1), as amended by 56 Fed. Reg. 3759 (1991). Protests such as the one here are considered to be based on an underlying solicitation defect, and as such must be filed prior to bid opening. See Home Care Med., Inc., B-245189, Aug. 21, 1991, 91-2 CPD ¶ 186.

Instead of timely protesting or otherwise trying to determine the required bid bond amount, CWR ignored the defect and submitted a bond in the amount of 5 percent, which amount was nowhere provided for in the IFB (and was inconsistent with the 20 percent minimum bid bond amount required under Federal Acquisition Regulation § 28.101-2). Protesters do not have the option of simply making assumptions regarding the meaning of an IFB with respect to an unclear requirement, and then expect relief when the agency does not act in the manner the protester assumed. See Home Care Med., Inc., supra; General Eng'g and Mach. Works, B-223929, Oct. 27, 1986, 86-2 CPD ¶ 477. Having failed to timely protest the apparent IFB defect, CWR's protest at this juncture of the rejection of its bid as nonresponsive is untimely and will not be considered. Home Care Med., Inc., supra.

The protester argues that the agency should have allowed it to provide a bid bond in the proper amount after bid opening. A bid guarantee is a material part of a bid, and where a bid bond is required it must be furnished with the bid in order for the bid to be responsive. Drill Constr. Co., Inc., B-239783, June 7, 1990, 90-1 CPD ¶ 538. A nonresponsive bid cannot be made responsive after bid opening. P.B. Eng'g Co., B-244640, July 22, 1991, 91-2 CPD ¶ 80.

The protest is dismissed.



John M. Melody
Assistant General Counsel