

DOCUMENT RESUME

02399 - [A1592580]

[Protest to Cancellation of Solicitation and Resolicitation].  
B-188450. June 1, 1977. 3 pp.

Decision re: Robert Burger Associates, Inc.; by Paul G.  
Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: General Services Administration; Isseks  
Bros., Inc.

Authority: 4 C.F.R. 20.2(B)(1)(2)(3).

Protester alleged that cancellation of a solicitation for rehabilitation of a cooling tower and subsequent resolicitation violated the competitive bidding system, that solicitation contained improprieties, and that requirements would not be met. Most of the protest was untimely, and questions of compliance with requirements was a matter for contract administration. (HTW)

02399 2580

8 Notations  
Proc II



**DECISION**

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

**FILE: B-188450**

**DATE: June 1, 1977**

**MATTER OF: Robert Burger Associates, Inc.**

**DIGEST:**

1. Protest of cancellation of solicitation filed more than 10 working days after protester was advised of cancellation is untimely and ineligible for consideration. Allegations of purported improprieties apparent on face of solicitation but not filed until after date for receipt of proposals are also untimely.
2. Compliance with contract requirements is contract administration matter not considered under GAO Bid Protest Procedures.

Robert Burger Associates, Inc. (Burger) protests the cancellation by the General Services Administration (GSA) of an invitation for bids (IFB) for project No. RNY 77008 for the rehabilitation of a cooling tower for the United States Mission to the United Nations, New York, New York, and the subsequent resolicitation of the requirement as a negotiated procurement with revised specifications.

Bids under the IFB were opened December 28, 1976, and the protester was the apparent low bidder. On January 13, 1977, a determination was made to reject all bids because GSA felt that the original IFB specifications were unduly restrictive of competition in that the specification requirement for cooling tower fill impregnated with natural chlorinated rubber composition was within the capability of only "a few contractors." It was further determined that the revised requirement was to be negotiated because urgency did not permit the time required for a formally advertised procurement. By letter of January 13, 1977, the protester was advised of the cancellation of the IFB and of the intended resolicitation of the requirement as a negotiated procurement. On January 20, 1977, the RFP was issued with February 1, 1977, as due date for receipt of proposals.

E-188450

On February 23, 1977, this Office received Burger's protest dated February 15, 1977. Burger alleged that it should have received an award under the IFB, and that cancellation thereof violated the integrity of the competitive bidding system. The protester further contended that the revised specifications improperly permitted the use of Melamine-based cooling tower fill because the protester's experience indicated that the substance was inferior and had resulted in defective performance where utilized in other projects. The protester also objected to the resolicitation of the project as a negotiated procurement, stating that it saw no reason for "this secrecy." After being advised that award was being made to Isseks Brothers, Inc., the low offeror under the negotiated procurement, prior to resolution of the protest by this Office, Burger also questioned whether Isseks met the experience requirements of the solicitation and whether there would be compliance with Paragraph 12 of Section 1590-4 of the specifications.

The bulk of the protest is untimely. Section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. 20.2(b)(2) (1977), requires that bid protests be "filed" not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. The term "filed" means receipt in the contracting agency or this Office, whichever the case may be. 4 C.F.R. 20.2(b)(3). Since the protester was advised by letter of January 13, 1977, of the cancellation of the IFB and rejection of bids thereunder, but did not "file" its protest until February 23, 1977, the objection to the cancellation and failure to make award to the protester is untimely and ineligible for our consideration on the merits.

Concerning the specification provision allowing the use of Melamine-based fill, and the issuance of the second solicitation on a negotiated basis, 4 C.F.R. 20.2(b)(1) provides that protests based upon alleged improprieties which are apparent in a solicitation prior to bid opening or closing date for receipt of proposals must be filed prior to such date to be timely. Inasmuch as Burger's objections in this regard were not filed prior to the February 1, 1977 due date for proposals, these allegations are similarly ineligible for our consideration.

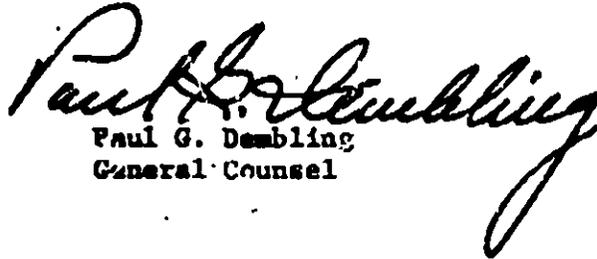
Paragraph 3 of Section 1590-1 of the specifications required offerors to furnish "a list of three similar installations of replacement fill, specifically cross flowtowers of this capacity or larger, listing names, locations and dates for reference." Isseks submitted a list of three projects on which it removed existing

B-188450

fill from cooling towers and replaced it with new fill. It is reported to us that a GSA representative investigated each of the three references submitted and verified that all work was properly performed and conformed with the qualification requirements of paragraph 3, Section 1590.

Paragraph 12 of Section 1590-4 requires the contractor to guarantee that all work will be in conformance with the contract requirements, free from defective and inferior materials and workmanship, and that the fill material will not deteriorate for a period of 5 years after date of final acceptance, under penalty of correction by the contractor without additional expense to the Government. Compliance with that requirement is a matter of contract administration that does not affect the legality of the award, and is therefore not for consideration under our Bid Protest Procedures.

The protest is dismissed.

  
Paul G. Dembling  
General Counsel