

DOCUMENT RESUME

03878 - [A2774007]

[Protests against Solicitation Specifications and Contract Award]. B-190055. September 29, 1977. 2 pp.

Decision re: Edward E. Davis Contracting, Inc.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense --
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Fort Rucker, AL.

Authority: 4 C.F.R. 20.2(b)(1). B-187524 (1976). B-185104
(1975). B-188171 (1977). B-187994 (1977). E-175262 (1972).
54 Comp. Gen. 60.

The protester contended that the solicitation's amended specifications make strict compliance impossible and that the low bidder submitted a below-cost bid. The protest concerning the specifications was untimely since it was filed after bid opening. There is no legal principle to preclude a contract award merely because the low bidder submitted a below-cost bid. GAO did not review affirmative responsibility determination in the absence of allegations of fraud or misapplication of definitive responsibility criteria. (Author/SC)

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DECISION



Edmund Pettit
Rec I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190055

DATE: September 29, 1977

MATTER OF: Edward E. Davis Contracting, Inc.

DIGEST:

1. Protest concerning appropriateness of specifications apparent from examination of solicitation, filed after bid opening, is untimely and not for consideration on merits pursuant to GAO procedures, 4 C.F.R. § 20.2(b) (1) (1977).
2. There is no legal principle on the basis of which award may be precluded merely because low bidder submitted below-cost bid.
3. Protest concerning affirmative responsibility determination which may be made with regard to apparent low bidder will not be reviewed by GAO absent allegations of fraud or misapplication of definitive responsibility criteria.

Edward E. Davis Contracting, Inc. (Davis), has protested against award of a contract for metal cabinets, resulting from invitation for bids (IFB) NO. DABT01-77-B-0145, issued by the Department of the Army (Army), Fort Rucker, Alabama.

The IFB specifications were modified by an amendment issued on August 12, 1977, and bid opening was extended to August 30, 1977. Award of the contract has been withheld pending resolution of this protest.

Davis' protest, filed with our Office on September 6, 1977, essentially contends that the amended specifications make strict compliance impossible. More specifically, Davis asserts that it could not find a manufacturer with a standard product which meets the Army's requirement for 0.028-inch thick metal. The required thickness falls between standard 22 and 24-gauge metal. Davis further contends that the price quoted for special manufacture of cabinets of the specified material exceeds that submitted by the apparent low bidder.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1)(1977), require that:

"[p]rotests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *"

The thickness of metal required for the cabinets in question was readily apparent upon examination of the IFB. Furthermore, Davis had an additional 18 days in which to protest any changes in the specifications effected by the August 12, 1977, amendment prior to bid opening. Davis, however, waited until 1 week after bid opening to protest the Army's specifications. This basis of the protest is, therefore, untimely and not for consideration on the merits.

Davis has also asserted, based on quotations the firm received, that cabinets manufactured in compliance with the specifications cannot be furnished at the price bid by the apparent low bidder. We are not aware of any legal principle on the basis of which an award may be precluded merely because the low bidder submitted a below-cost bid. Karadis Bros. Painting Co., Inc., B-187524, November 22, 1976, 76-2 CPD 440; Parsons Custom Products, Inc., B-185104, November 14, 1975, 75-2 CPD 331.

Proper rejection of a bid as unreasonably low would require a determination that the bidder is not responsible. B-175262, January 12, 1972. Although the Army may not yet have made a determination as to the low bidder's responsibility, our Office no longer reviews protests concerning affirmative determinations of responsibility absent a showing of fraud or when the solicitation contains definitive responsibility criteria which allegedly have not been applied. Vi-Mil, Inc., B-188171, February 23, 1977, 77-1 CPD 132; DOT Systems, Inc., B-187994, February 18, 1977, 77-1 CPD 123; Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Davis, however, has not asserted either of these allegations.

In view of the above, the protest is dismissed.

for Milton J. Foster
Paul G. Deubling
General Counsel