

15189 Klemmer

DECISION



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

PLI

[Protest of IFB Bonding Requirements and Bid Rejection]

FILE: B-199779

DATE: October 16, 1980

MATTER OF: Harvey Bell

DIGEST:

1. Protest based upon IFB's bonding requirements is untimely since protest was filed after bid opening. 4 C.F.R. § 20.2(b)(1) (1980).
2. Bid bond is material part of IFB. Therefore, failure to provide bid bond where required by IFB renders bid nonresponsive and agency's rejection of bid was proper. Protest is denied.

On May 30, 1980, the Department of Agriculture, Forest Service (FS), issued invitation for bids (IFB) R5-05-69 for construction of a segment of the Pacific Crest Trail on the Klamath National Forest. The IFB required each bidder to submit a performance bond, payment bond, and bid guarantee (bid bond).

Six bids were opened on July 1, 1980. Harvey Bell (Bell), the protester, submitted the low bid of \$17,348; however, he did not submit a bid bond. The FS found Bell's bid to be nonresponsive because Bell did not submit a bid bond. Award has been made during the pendency of Bell's protest.

On July 30, 1980, or after bid opening, Bell filed a protest with our Office contending that procurement regulations do not permit the requirement of bid bonds for bids in these circumstances and the contract should be awarded to Bell.

Bell's protest initially challenges the propriety of the IFB's bonding requirements, and since the protest was not filed until after bid opening, it is untimely under 4 C.F.R. § 20.2(b)(1) (1980) of our Bid Protest Procedures and not for consideration on the merits. 4 C.F.R. § 20.2(b)(1) (1980) provides in part as follows:

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"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

The next issue is whether Bell's bid should have been rejected as nonresponsive for failure to provide a bid bond as required by the IFB. We have stated that a bid bond is a material part of an IFB, and that except as provided in the Federal Procurement Regulations (FPR), a procuring activity must reject as nonresponsive a bid that is not accompanied by a required bid bond. FPR § 1-10.103-4 (1964 ed. amend. 200) provides that noncompliance with an IFB's bid bond requirement shall be cause for rejection of a bid, except in circumstances not applicable here. United States Contracting Corporation, B-198095, June 27, 1980, 80-1 CPD 446.

Based on the foregoing, the rejection of Bell's bid was proper, and the protest is denied.



For the Comptroller General
of the United States