

DECISION



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

FILE: B-198609

DATE: November 20, 1980

MATTER OF: Skillens Enterprises, Inc.

DLG 01441

DIGEST:

*[Protest Alleging IFB Specifications Were Ambiguous and
Incorrect]*

1. Protest that IFB specifications are ambiguous and incorrect is untimely under Bid Protest Procedures and not for consideration on merits, since it concerns alleged impropriety in IFB and was not filed prior to bid opening.
2. GAO does not review affirmative determinations of responsibility where there is no showing of fraud or that definitive responsibility criteria were not applied.
3. Protest attacking responsiveness of bid is timely, since it was filed before protester had notice of award which ordinarily starts running of time on protest against responsiveness of low bid.
4. Where one IFB provision required bid acceptance period of 60 days and another IFB provision indicated that a bid acceptance period of more than 60 days was required, GAO will not object to award to low bidder since it appears that none of the bidders was prejudiced by the inconsistency and award was made within 60 days.

Skillens Enterprises, Inc. (Skillens), protests the award which was made to Jesco Resources, Inc. (Jesco), for custodial services under invitation for

DLG 05561

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bids (IFB) DAKF19-80-B-0028 issued by the Contracting Division, Fort Riley, Kansas. ~~PLC 00467~~ 00377 AGC

(Essentially, Skillens protests that (1) the specifications in the IFB are ambiguous and incorrect, (2) Jesco is nonresponsive, and (3) Jesco's bid is nonresponsive because it offered less than the 120-day acceptance period specified in the IFB.)

We have decided that the protest provides no basis for relief by our Office.

Skillens' first basis of protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), and not for consideration on the merits, since it concerns alleged improprieties in the IFB and it was not filed prior to bid opening.) See Blazer Industries, Inc., B-194188, June 19, 1979, 79-1 CPD 440.

Skillens' second basis of protest is not for review by our Office. (We do not review affirmative determinations of responsibility where, as in this case, there is no showing of fraud or that definitive responsibility criteria were not applied.) See Peter Gordon Company, Inc., B-196370, July 18, 1980, 80-2 CPD 45; KET, Inc., B-190983, December 21, 1979, 79-2 CPD 429.

Skillens' third basis of protest attacking the responsiveness of Jesco's bid is timely, since it was filed before Skillens had notice of award (a position adverse to its interest), which ordinarily starts the running of time on a protest against the responsiveness of a low bid. Cf. Propserv Incorporated, B-192154, February 28, 1979, 79-1 CPD 138.

(On the matter of responsiveness, 23 bidders, including the protester, were entrapped into offering 60 day acceptance periods, in accordance with one provision of the IFB, in their bids when the IFB provided in another section that acceptance periods of less than 120 or 160 days (the IFB was ambiguous in this regard) would be nonresponsive.) A 24th bidder, who was the 15th low bidder, provided a 120-day acceptance period, apparently in reliance upon the ambiguous statement.

(The entrapment of the 23 bidders occurred because, in the "Offer" section on the first page of standard form (SF) 33, the contracting agency typed in "60" for the calendar days in the acceptance period, crossed out "60 calendar days unless a different period is inserted by the offeror" and cross-referenced the bidders to paragraph L 25, which had nothing to do with the acceptance period. Paragraph L 24 should have been cited.)

The "Offer" section as prepared by the contracting agency stated:

"In compliance with the above, the undersigned agrees, if this offer is accepted within 60 calendar days from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule. See Section L, para 25."

Paragraph L 24, which should have been referenced instead of L 25, provided:

"Offerors allowing less than the number of one hundred and sixty (120) [note inconsistency between words and figures] calendar days specified in the 'Offer' portion of SF 33 for acceptance by the Government will be rejected as nonresponsive." (Emphasis added.)

While the latter provision is not clear as to the number of days to be provided for acceptance, it is clear that 60 days would not be responsive under it.

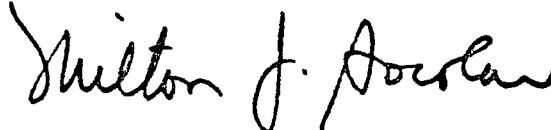
In 52 Comp. Gen. 842 (1973), and in Hild Floor Machine Co., Inc., B-196419, February 19, 1980, 80-1 CPD 140, we held that cancellation and resolicitation was required where it was still possible when bidders, including the low bidder, were entrapped into similar

nonresponsive 60-day acceptance periods by a failure to cross-reference the minimum acceptance period provision which made periods of less than 90 days nonresponsive. In the Hild decision, we indicated the result was required because of the prejudice to higher bidders who offer longer acceptance periods. We stated that, as a general rule, the longer a bid must be exposed to the uncertainties of the marketplace, the greater the risk and, thus, the higher the bid must be.

However, (in the immediate case, apparently the only bidder who offered more than a 60-day acceptance period, was not prejudiced by the long acceptance period, since it has raised no objection to the award to Jesco which was made on May 30, 1980. We have permitted acceptance of a deviating bid when it resulted in a contract satisfying the Government's actual needs and it did not prejudice any other bidder.) George Hyman Construction Company et al., B-188603, June 15, 1977, 77-1 CPD 429.

In this case, (the offer of a 60-day acceptance period was within the Government's actual needs, since the award was made within 60 days of bid opening. Further, Skillens was not prejudiced by an award on that basis, since it offered the same acceptance period. In the circumstances, the integrity of the competitive bidding system has not been adversely affected by the inconsistency in the IFB bid acceptance period and, therefore, we will not object to the award.)

(Accordingly, the protest is denied in part and dismissed in part.)



For the Comptroller General
of the United States