

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE: B-207774****DATE: October 22, 1982****MATTER OF: Holm Well Drilling, Inc.****DIGEST:**

1. Protest against allegedly restrictive specifications, where restrictiveness should have been apparent prior to bid opening, is untimely and not for consideration where filed after bid opening.
2. Bidder, who submitted bid without required bid bond, submitted nonresponsive bid and may not be considered interested party because protester is ineligible for award on procurement and resolicitation would not be necessary even if protest contentions were valid.

Holm Well Drilling, Inc. (Holm), protests the specifications in United States Corps of Engineers (New York District) invitation for bids No. DACA51-82-B-0065, alleging that they will restrict competition on the procurement. Holm also contends that multiple awards should be made rather than one award to the firm whose aggregate price was low on the two items. Finally, Holm raises a question concerning the responsibility of the awardee. We dismiss the protest.

First, as regards the issue of specification restrictiveness, our Bid Protest Procedures provide at 4 C.F.R. § 21.1(b)(1) (1982) that "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 protest against the alleged specification restrictiveness was received by our Office and by the contracting agency on June 4. Bid opening had occurred on May 26. Since this portion of the Holm protest was not filed prior to bid opening, it is untimely and dismissed.

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Second, we find Holm not to be an interested party under our Bid Protest Procedures to raise the other issues in its protest because Holm did not submit the required bid bond with its bid and its bid was rejected as nonresponsive. The furnishing of a bid bond, where required, is a material requirement that cannot be waived, and a failure to submit one prior to bid opening renders a bid nonresponsive. Engineering Service Systems, Inc., B-192319, July 19, 1978, 78-2 CPD 53; Roderick Construction, B-193116, January 30, 1979, 79-1 CPD 69.

In view of the nonresponsiveness of the Holm bid, Holm is not eligible for an award even if we were to sustain its protest. The protester therefore does not have the direct and substantial interest that is necessary to make it an interested party in this case. Further, Holm's timely raised issues, if sustained, would not result in a resolicitation and an opportunity for Holm to rebid. Therm-Air Mfg. Co., Inc., B-195401.2, February 11, 1980, 80-1 CPD 119; de Weaver and Associates, B-200541, January 6, 1981, 81-1 CPD 6.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel