

DECISION



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

FILE: B-215169

DATE: May 23, 1984

MATTER OF: Diamond Detective Agency

DIGEST:

1. Protest alleging improprieties in an IFB apparent prior to bid opening must be filed before bid opening in order to be considered.
2. Whether a contractor has complied with a state statute governing filing as a foreign corporation is a matter to be resolved between the firm and state authorities, and only in limited situations would it relate to the finding that the bidder is responsible which, in turn, GAO does not generally review.

Diamond Detective Agency protests the award of a contract for protective services to General Security Services Corporation under invitation for bids (IFB) No. GS-05-B-42472 issued by the General Services Administration. Diamond principally complains that the IFB failed to include a Department of Labor wage determination for a particular skilled position to be furnished by the contractor, thus making it impossible for bidders to factor the proper pay rates into their bids. We will not consider the matter.

Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), which set forth our requirements for timely filings, a protest alleging improprieties in an IFB that are apparent prior to bid opening must be filed prior to bid opening. Diamond clearly recognized that the wage determination had not been included with the IFB prior to the February 9, 1984 opening of bids. The firm's protest to this Office, filed nearly 3 months later, therefore does not meet our timeliness requirements and will not be considered. Brod-Dugan Company, B-212731, Nov. 28, 1983, 83-2 CPD ¶ 619.

Diamond also alleges that the awardee has not filed with the Indiana Secretary of State as a foreign corporation as required by state statute. Regardless of when Diamond first learned of this alleged situation, we will not consider the matter. Like a contractor's compliance with state and local licensing requirements, this issue is, as a general matter, one to be resolved between state authorities and the contractor, since it raises a question of the awardee's legal capacity under state law.

We nevertheless point out that a contracting officer may consider a firm's lack of authority to transact business in a state as a foreign corporation as rendering a bidder nonresponsible in a situation where enforcement attempts by the state are a reasonable possibility, and such action would interrupt and delay performance if the contract were awarded to that firm. Here, however, since the contract has been awarded, the contracting officer obviously decided that the awardee is responsible. See Oliver Taxi & Ambulance Service, B-213590, Dec. 14, 1983, 83-2 CPD ¶ 688. Our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procuring officials or an allegation that definitive responsibility criteria were not applied, neither of which is involved here. American Elevator Company, B-213129, Dec. 16, 1983, 83-2 CPD ¶ 700.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel