



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dean Security Professionals

File: B-224543.6

Date: December 10, 1986

DIGEST

1. Protest against solicitation requirement for bid and performance bonds is untimely when filed after bids are opened.
2. When required, a bid bond is a material part of the solicitation. Therefore, failure to furnish a required bond cannot be cured after bid opening.

DECISION

Dean Security Professionals (Dean) protests the requirement for bid and performance bonds in solicitation No. 9PPB-86-C0539, issued by the General Services Administration (GSA) for security guard services. Dean also protests the rejection of its bid as nonresponsive for failure to furnish the required bid bond with its bid.

We dismiss the protest in part and deny it in part.

Bids were opened on November 12, 1986, and Dean was determined to be the apparent low bidder for certain items under the invitation for bids. However, Dean's bid bond had become separated from the bid before bid opening, and the bid was rejected as nonresponsive on this basis.

Dean protests that bid and performance bonds should not be required, contending that it is excepted from federal regulations requiring such bonds because it is a service organization.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date.

037577


4 C.F.R. § 21.2(a)(1) (1986). Consequently, Dean's protest against the requirement for bid and performance bonds, filed after bids were opened, is untimely and will not be considered further.

Dean also argues that its bond was inadvertently separated from the bid, and that it is now able to show that it had a bid bond notarized before the bid opening date. Furthermore, Dean points out that the rejection of its bid will result in a substantial increase in cost to the government.

It is well-settled that a bid is nonresponsive when the required bond is not submitted. SMATCO, Inc., B-218548, June 19, 1985, 85-1 CPD ¶ 700; see also Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-4 (1985). When required by the invitation for bids, a bid bond is a material part of the bid and must be furnished with it. Hydro Dredge Corp., B-214408, Apr. 9, 1984, 84-1 CPD ¶ 400. Moreover, the responsiveness of a bid must be established at the time of the bid opening, and is not affected by a later offer to cure any defects. Perkin-Elmer, B-214040, Aug. 8, 1984, 84-2 CPD ¶ 158.

Here, Dean's failure to provide a valid bid bond with its bid at the time bids were opened rendered its bid nonresponsive. A nonresponsive bid cannot be accepted, even if it offers a product at a lower price, since maintenance of the integrity of the competitive bidding system is more in the government's interest than a pecuniary advantage to be gained in a particular case. Survivair, division of U.S.D. Corp., B-215214, Dec. 3, 1984, 84-2 CPD ¶ 600. We therefore find that the bid was properly rejected.

The untimely aspect of the protest is dismissed; the remainder is denied.

for 
Harry R. Van Cleve
General Counsel