



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-240121.2

August 6, 1990

Mr. Russel Kirk
President
Kirk Bros., Inc.
211 Matthews Avenue
P.O. Box 128
New Britain, PA 18901

Dear Mr. Kirk:

This responds to your July 3, 1990, letter providing additional information on the Kirk Bros., Inc. protest (B-240121) of request for proposals (RFP) No. N62472-89-R-0067, issued by the Department of the Navy for the completion of contract No. N62472-82-C-0099, under which the Navy defaulted Kirk on January 29.

In the protest, which our Office dismissed on June 21, you contended that the Navy, which was allegedly required to award a new contract based on the same plans and specifications, improperly used new plans and specifications in the RFP for the completion of the refrigeration system for the Naval Air Propulsion Center, Trenton, New Jersey. Additionally, you contended that the Navy was required but did not conduct the reprocurement using sealed bidding procedures, thereby violating the statutory requirement to expand competition. Further, you alleged that Kirk was an interested party with standing to protest because the Navy had stated that it would backcharge the cost of completing the project to both Kirk and its bonding company, notwithstanding the fact that the Navy had conducted the reprocurement on the basis of new plans and specifications which would result in increased backcharges.

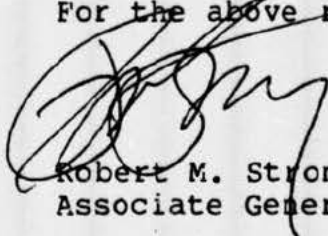
Here, the record indicates that, by letter dated March 6, the Navy notified Kirk's bonding company, Employers Insurance of Wausau, that since Wausau had refused to enter into a takeover agreement with the Navy for completion of the work under the defaulted contract, the requirement was being reprocured. The RFP was issued on March 1, with a

April 17 closing date for proposals. There was no indication that you attempted to obtain any information regarding the reprocurement prior to the April 17 closing date. To the contrary, the record indicates Kirk only challenged the RFP provisions when its protest was filed with our Office on June 20.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals are required to be filed prior to bid opening or the closing date. 4 C.F.R. § 21.2(a)(1) (1990). Since Kirk knew or should have known of the reprocurement soon after March 14, when the Navy's March 6 letter was received by Wausau, the protest of the RFP's terms, filed on June 20, well after the April 17 closing date for initial proposals, was untimely.

With regard to Kirk's contention that the Navy's use of new plans and specifications will increase backcharges that Kirk and Wausau will be required to pay the agency, that is a matter of contract administration within the jurisdiction of the contracting agency and is for resolution under the disputes clause of Kirk's contract, not our Bid Protest Regulations. 4 C.F.R. § 21.3(m)(1).

For the above reasons, the protest was dismissed.



Robert M. Strong
Associate General Counsel