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DECISION



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

FILE: B-194953

DATE: June 21, 1979

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MATTER OF: American Mutual Protective Bureau

DLG/D1895

DIGEST:

1. Allegation that awardee cannot comply with contract requirements is dismissed since Government's acceptance of responsive bid effectively binds bidder to perform in accordance with terms of contract, and whether bidder is able to do so is matter of responsibility which will not be reviewed by GAO except in limited circumstances not applicable here.
2. Protest concerning specification deficiencies is not for consideration by GAO since protest was not filed either with contracting agency or GAO before bid opening. 4 C.F.R. § 20.2(b)(2).

American Mutual Protective Bureau (American Mutual) protests specification deficiencies in invitation for bids (IFB) No. PBS-9PS-79-05, issued by the General Services Administration (GSA) Region 9, San Francisco, California, for the procurement of armed guard services. Additionally, American Mutual protests the award of this contract to Universal Service Contractors (Universal) on the basis that Universal "is a [nonresponsible] bidder who has in the past not performed on government contracts * * * and is marginally in operation."

With regard to American Mutual's contention that Universal is nonresponsible, the award of a contract to Universal necessarily involved an affirmative determination of that firm's responsibility under Federal Procurement Regulations (FPR) § 1-2.407-2 (1964 ed. amend. 139). Our Office does not review protests which question such determinations of responsibility unless either fraud on the part of the procuring official is alleged, or the solicitation contains definitive responsibility criteria which have not been

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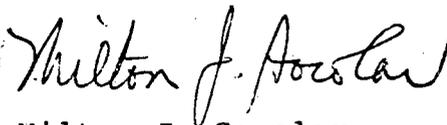
[ALLEGATION That Awardee Cannot Comply
with Contract Requirements]

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applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64, and Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. Neither exception is applicable here.

Moreover, the protest concerning the specifications is untimely. While our Bid Protest Procedures (Procedures) urge protesters to initially seek resolution of their complaints with the procuring agency, there is a requirement that before we will consider any subsequent protest to our Office the initial protest must have been filed with the agency in a timely manner. See 4 C.F.R. § 20.2(a) (1978). Section 20.2(b)(1) (1978), of our Procedures, provides that protests based upon an alleged impropriety in any type of solicitation, which is apparent prior to bid opening, must be filed "prior to bid opening." We understand from GSA that bid opening was April 10, 1979. Although American Mutual requested "clarification" of the specification prior to bid opening, American Mutual's initial protest to the agency was not filed until May 15, 1979, after bid opening. Therefore, American Mutual's protest to the agency was untimely filed and will not be considered on the merits.

The protest is dismissed.



Milton J. Socolar
General Counsel