



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

B-179319(1)

40031

October 5, 1973

Alexander Boskoff
Attorney at Law
1111 E Street, NW.
Washington, D. C. 20004

Dear Mr. Boskoff:

This is in reply to your letters of September 13, and July 31, 1973, protesting on behalf of J. S. & G., Incorporated, against award of any contract under invitation for bids (IFB) No. 2320-0-4-047-GW, issued June 14, 1973, by the Department of General Services, Bureau of Materiel Management, Government of the District of Columbia.

The subject invitation requested bids for trash and refuse removal and disposal services. Bids were opened June 28, 1973, and J. S. & G. was the second low bidder. J. S. & G., the incumbent contractor for these services, has had its contract extended and is continuing to perform pending the protest.

The record discloses that the president of J. S. & G. orally advised the contracting officer by telephone on June 27, 1973 (one day before the bid opening), that he was protesting the solicitation specifications, and that the contracting officer replied that the protest could not be considered in view of an IFB provision requiring such protests to be filed with the procurement office in writing at least five days before the bid opening.

The record further discloses that on June 28, 1973, immediately after the bid opening, J. S. & G. filed a written protest with the contracting officer. In filing your protest with this Office, you state:

"On 28 June 1973, Protestant filed its written protest with the District (copy attached), and thereafter had several meetings with District personnel, during which Protestant urged that a site survey be carried out for the purpose of determining whether the advertised specifications were in fact substantially at variance with the services which would in fact be required, and paid for, by the sub-agencies.

PURCHASED DECISION
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"Pending these discussions, Protestant withheld filing the protest with the General Accounting Office. It now appearing that the District does not intend to reject all bids for the purpose of redrawing its invitation, so that it will accurately describe the services which will be required, the protest is now being referred to your office. No award has yet been issued under the invitation."

Essentially, you have protested the award of a contract under a solicitation which you allege contains specifications which substantially misstated the scope and nature of the services actually required. In this connection, you have forwarded to us a copy of a letter dated April 10, 1973, addressed to the Bureau of Material Management from your client, as evidence that a protest was filed in a timely manner with the agency. Specifically, you refer to the following language in the letter:

"If we may be of any assistance to you in the placement of the new equipment you are receiving this week, please do not hesitate to contact our Office immediately."

You have advised us that the reference to the "new equipment" meant four compaction units in possession of the D. C. General Hospital. Your client states that prior to and after receipt of the solicitation he spoke with the appropriate agency representatives regarding changing the specifications to reflect the actual requirements of the new equipment. However, we must conclude that nothing contained in the letter of April 10, 1973, could be construed as a written protest of the specifications used in connection with the instant solicitation, which was issued June 14, 1973.

Furthermore, the Deputy Director of the Bureau of Material Management, District of Columbia, reports that several telephone calls were initiated by J. S. & G. to agency personnel after bid opening concerning J. S. & G.'s protest, and one meeting took place between J. S. & G. representatives and agency personnel in the Deputy Director's office on July 18, 1973. He has advised us, however, that throughout these discussions the agency's position with respect to the untimeliness of the protest remained consistent.

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Section 20.2(a) of our Interim Bid Protest Procedures provides that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed with the General Accounting Office prior to bid opening. It is further provided that if the protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within five days of notification of adverse action will be considered provided the initial protest to the agency was made timely.

It is clear that your protest was considered to be untimely filed with the contracting agency because it was not filed in writing until after the bid opening. Although your protest was made orally to the contracting officer one day before bid opening, we do not believe we may consider it as timely filed with the agency for that reason. It is reasonable for the agency to insist that protests be filed in writing and we will not object to such a requirement. In this connection, Section 20.1(a) of our Bid Protest Procedures provides that protests may be filed with the General Accounting Office by telegram or letter.

Accordingly, we must consider your protest to be untimely and must decline to consider it on the merits.

Sincerely yours,

For the Paul G. Dembling
Comptroller General
of the United States