

Protest of ) Date: November 27, 1987  
K-D, INC. )  
Solicitation No. 419980-87-V-0738-114 ) P.S. Protest No. 87ENGINEERING

### DECISION

K-D Engineering, Inc. (K-D), protests the contracting officer's decision to allow Integrated Handling Systems (Integrated) to perform a contract under Invitation For Bids No. 419980-87-V-0738 (IFB), on grounds that Integrated did not submit performance and payment bonds within the time period stipulated in Block 9 of Integrated's bid form, PS Form 7388.

Solicitation No. 419980-87-V-0738, issued May 11, 1987, by the Facilities Service Center, Eastern Region, sought bids for the installation of a new trayed mail system at the Suburban Maryland General Mail Facility. When bids were opened September 1, Integrated's bid of \$787,646 was the lowest of six bids received. K-D, the second low bidder at \$815,000, objected by letter of September 2, to the possible contract award to Integrated; it claimed that Integrated was financially limited in its ability to perform the contract and lacked experience with the type of mail handling system specified in the IFB. Because the bids were being evaluated, the contracting officer, in a letter dated September 8, dismissed the protest as obviously without merit since the protest was premature. By letter dated September 18, contract award was made to Integrated, and notice of that fact was sent to K-D by letter that day.

In its protest, dated October 23 and received by this office October 27, K-D claims Integrated had not submitted its bonds within the time required by Block 9 of the bid form, PS Form 7388.<sup>1/</sup> As a result, K-D asserts Integrated failed to perform in accordance with the terms of its contract and should be terminated for default. In his report to this office, the contracting officer states that he made a determination to delay the start of the project based on Integrated's intention to provide the payment and performance bonds. The contracting officer contends that this delay was in the best interest of the Postal Service, since the difference between Integrated's and the second low bid, \$27,000, represented a savings to the Postal Service.

<sup>1/</sup>The section provides that bonds are to be given within 10 days of Integrated's receipt of notice of award. In the instant case, the required submission date for the bonds was October 2 Integrated's bonds were received October 27.

We do not reach the merits of the protest. The protest is untimely. Our regulation governing bid protests, Postal Contracting Manual 2-407.8, provides, at (d)(3):

[P]rotests must be received not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

The timeliness requirement imposed by this regulation is jurisdictional. We cannot consider the merits of any issue which has been untimely raised. Bessemer Products Corporation, P.S. Protest No. 86-5, March 26, 1986. The October protest was untimely both as written and as received.

We would be unable to reach the merits of the protest if it were timely. That the contractor supply performance and payment bonds is a requirement of the contract. Whether a contractor performs in accordance with the requirements of its contract is a matter of contract administration which does not relate to the propriety of the award. Hybrid Abstracts, Comp. Gen. Dec. B-207083, May 24, 1982, 82-1 CPD & 488. Contract administration is the function and responsibility of the contracting officer and is not for consideration under the protest procedures of Postal Contracting Manual 2-407.8.<sup>1/</sup> See York International Corporation, P.S. Protest No. 87-111, November 20, 1987.

The protest is dismissed.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[checked against original JLS 3/22/93]**

<sup>2/</sup>K-D cites a decision of the General Services Administration Board of Contract Appeals in support of its argument that late submission of bonds may result in the contractor being terminated for default. Whatever the possible relevance of the cited case in an appeal from a default termination, it has no bearing on the applicability of bid protest procedures.