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**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-198873

June 16, 1980

The Honorable William M. Brodhead  
House of Representatives

Dear Mr. Brodhead:

Rejection of

We refer to your letter of May 13, 1980, with which you enclosed a letter from the Coast Guard dated April 6, 1980, responding to your inquiry concerning the protest of Metropolitan Windows and Doors whose low bid was rejected for failure to provide a timely bid bond.

It appears to be the rejected bidder's view that the bid should not have been rejected because the invitation for bids (IFB) should not have required a bond. Essentially, the objection to the bond requirement is an objection to an impropriety in the IFB which should have been raised before the bid opening. Elevator Sales & Service, Inc., B-193519, February 13, 1979, 79-1 CPD 102.

Under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), the bidder's objection is untimely. Section 20.2(b)(1) of the Procedures provides that protests based upon alleged improprieties in an IFB must be made prior to bid opening.

Concerning the applicability of our Procedures to protests filed by or referred to our Office by Members of Congress, it has been decided that no protest will be considered on its merits if untimely filed, unless one of the exceptions in section 20.2(c), infra, is applicable regardless of the source of the protest. This policy was adopted because our Office can best function if it is permitted to decide an issue while it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time for the filing of a protest. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this



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would suggest to the procurement community that the timeliness provisions of our Procedures could be circumvented by submitting the protest through a Member of Congress.

Section 20.2(c) of our Procedures provides that for good cause shown or where there are issues significant to procurement practices or procedures, our Office may consider any protest which is not timely filed. However, these exceptions are not involved here. See 52 Comp. Gen. 821, 823 (1973). Therefore, the protest will not be considered on the merits.

However, for your general information, we note that we have held that even if the bid bond amount required by a solicitation is more than required by law, a procurement activity must reject as nonresponsive a bid that does not conform with that requirement. Elevator Sales & Service, Inc., supra.

Sincerely yours,

*Harry R. Van Cleave*  
for Milton J. Socolar  
General Counsel