

BASE BID

(PERFORM ALL WORK OF THE CONTRACT WITH THE
CONTRACTOR'S OWN FORCES)

_____ Dollars (\$ _____)
Written Figures

OPTION BID

(PERFORM ALL WORK OF THE CONTRACT WITH A
COMBINATION OF CONTRACTOR'S FORCES AND
PARTIAL PRISON INMATE LABOR PROVIDED BY
THE OWNER)

_____ Dollars (\$ _____)
Written Figures

3. The specification further stated in Section 1016, paragraph 2b that,

The State reserves the right to award the contract based upon either the Base Bid or the Option Bid prices received from the bidders. Bid prices will be selected at the State's discretion....

4. The bids were due at 2:00 p.m. on June 26, 1990 and opened with the following results:

<u>Bidder</u>	<u>Base Bid</u>	<u>Option Bid</u>
Penn Perry, Inc.	\$592,238	None
Raintree Industries	\$567,450	\$558,450
Korb Roofers, Inc.	\$335,041	\$313,041

5. On July 3, 1990 a DGS employee discovered an unopened bid for this project from L.R. Lloyd Co. (Lloyd). Lloyd's bid was received via U.S. mail by DGS on June 25, 1990. This bid was delivered erroneously by DGS personnel to DGS Office of Engineering and Construction (OEC) in room 1405, 301 W. Preston Street instead of room 1311 to which the bid envelope was addressed.

6. OEC conducts construction related procurement for DGS. OEC procedure is for construction contract bids to be sent to Room 1311, 301 W. Preston Street and bids for professional service contracts to room 1405, 301 W. Preston Street.

7. Regina Turner, a DGS employee in room 1405, failed to notice the bid was addressed to room 1311 rather than 1405. The bid of Lloyd remained in the wrong office until its discovery on July 3, 1990.

8. Rosella Taylor, a DGS employee in charge of room 1311 bids for construction, took Lloyd's unopened bid and notified Dorothy A. Neimeyer, Chief of DGS Contract Services, of the erroneous delivery.

9. On July 10, 1990, Dorothy A. Niemeyer notified Appellant by phone of the discovery of the Lloyd bid and that it would be opened on July 13, 1990. (No reason was offered why it took from July 3 to July 10 to notify the parties.). Appellant's president, Clarence Wolf, III, was invited to attend the bid opening. From this date Appellant knew or should have known the basis to protest the unopened bid of Lloyd.

10. On July 11, 1990 DGS sent a letter to all bidders detailing the lost Lloyd bid and DGS's plan for its public opening on July 13, 1990.

11. Lloyd's bid was opened giving a Base Bid of \$343,745 and an Option Bid of \$304,471.

12. The record is clear that Lloyd's bid was timely delivered to DGS and that only the errors of omissions of DGS employees caused

its delayed opening. The grounds for the protest were that (1) Lloyd's bid should not have been opened and Lloyd was ineligible for award, and (2) the solicitation stated the award should be made on the basis of the Base Bid only (not the Base Bid or the Option Bid), so Lloyd was not the low bidder and could not receive the award. On July 26, 1990, the procurement officer issued a final decision denying the protest. The basis for the decision was Korb's protest against the opening of LLOYD's bid was late since it was filed more than seven days after Korb was informed that the bid would be opened, and that the solicitation clearly stated that the award could be made on either the Base Bid or the Option Bid. From that decision Korb filed a timely appeal to this Board.

Decision

Timeliness of the Protest.

Appellant's protest that Lloyd's bid should not have been opened and that Lloyd's bid was ineligible was not timely. A bid protest must be filed within seven days after the basis for the protest is known or should have been known. COMAR 21.10.02.03B.

Appellant knew on July 10, 1990 that Lloyd's misplaced bid had found and a DGS decision made to open it on July 13, 1990. Appellant did not protest until July 19, 1990, and the protest on that ground is untimely.

Furthermore, Appellant's protest that award would be made on the basis of the Base Bid only, was not timely. Appellant should have known the basis of this protest upon its receipt of the bid package which clearly stated the bid could be awarded to the low

Option Bid. Therefore, the protest on this ground should have been made before bid opening. We accordingly dismiss the appeal on grounds that the protests were not timely filed.

