

DECISION



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

50916

FILE: B-184346

DATE: September 9, 1975

MATTER OF: Emerson Electric Co.

97550

DIGEST:

Protest by bidder against alleged specification impropriety which was filed with his bid is untimely since under section 20.2(b)(1) of our Bid Protest Procedures any protest against improprieties in invitation must be filed prior to bid opening.

Emerson Electric Co. (Emerson) has protested the award of a contract to any other firm under invitation for bids (IFB) N62477-75-C-0352, issued by the Naval Facilities Engineering Command.

The invitation, issued on June 9, 1975, requested bids for the design, furnishing all materials and equipment, fabrication, assembly, testing, inspection and packaging of uninterruptible power supplies ready for installation and acceptance. The bids were opened, as scheduled, on June 20, 1975. Emerson submitted the low bid. However, Emerson included with its bid an enclosure which took exception to the testing requirements for electromagnetic interference (EMI) and at the same time, protested award to any other firm.

The protest was denied on the basis that it was untimely. Also, it was pointed out that the exceptions taken by Emerson rendered its bid nonresponsive. By letter of June 27, 1975, Emerson lodged a protest with this Office questioning the EMI requirements set out in the specifications.

Section 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides, in part:

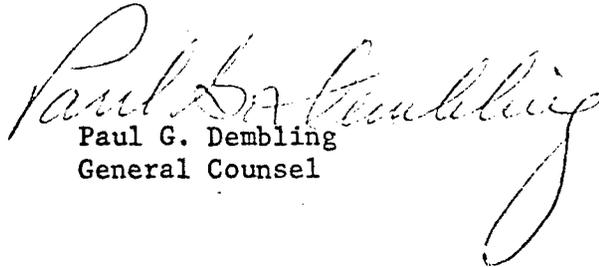
"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

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Since Emerson protests an alleged impropriety in the specifications which was apparent prior to bid opening, it was required to file such protest either with this Office or the contracting agency prior to bid opening which it did not do. A protest filed with the bid package is not timely. B-178817, June 15, 1973.

While Emerson claims to have made personal and telephone contact with cognizant technical personnel at the contracting agency prior to bid opening in order to discuss the alleged improprieties in the specifications, there is no evidence of record to indicate that these discussions were understood by the technical personnel to be a protest requiring resolution. See Applied Research Laboratories (ARL), B-180483, February 27, 1974, 74-1 CPD 108.

For the above reasons, we find the protest to be untimely filed and we will take no further action in the matter.


Paul G. Dembling
General Counsel