

**DECISION**

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

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FILE: B-185880

DATE: September 15, 1976

MATTER OF: Doyle Lunstra Equipment Co., Inc.; and  
J. D. Evans Equipment Co.**DIGEST:**

1. Protest against solicitation cancellation filed more than 10 days after notice thereof is untimely under § 20.2(b)(2) of Bid Protest Procedures notwithstanding there were pending protests related to matters under the solicitation at time of cancellation, agency delayed submitting report in response to protest for more than 2 months, and resolicitation had not been issued at time of filing protest.
2. Failure to file protest against IFB cancellation within 10 days after receipt of notification of cancellation renders protest untimely under section 20.2(b)(2) of GAO Bid Protest Procedures and not for consideration on merits under exception set forth in section 20.2(c) as significant issue.
3. Protest by second low bidder contesting responsiveness of low bidder is rendered moot by cancellation of solicitation.

Doyle Lunstra Equipment Co., Inc. (Lunstra), protests any award of a contract to the J. D. Evans Equipment Co. (Evans) under invitation for bids (IFB) A00-3716, issued by the Bureau of Indian Affairs (BIA), Aberdeen, South Dakota. The subject IFB called for the rental of three front end loaders and two motor graders for 36 months with an option to purchase. The protest is restricted to item 1 of the IFB. It is reported that the "date issue" was inadvertently left off the IFB but that the date of issue was December 8, 1975.

Lunstra contends that its firm submitted the low responsive bid and that the bid of Evans for item 1 consisting of three front end loaders was nonresponsive in that Evans' bid specified 1975 Terex models and not "current year" models as called for in the IFB, which Lunstra contends means 1976 models.

Evans contends that its firm submitted the low responsive bid and therefore should be awarded the contract. Counsel for Evans also protests the decision of the BIA to cancel the IFB.

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Bids were opened on January 6, 1976, and the record discloses that all the bidders offered 1976 front end loaders except the low bidder, Evans.

Page 3 of the IFB described item No. 1 as follows:

"Four-wheel drive rubber tired loader, current year model, unused, with a general purpose bucket and v-type snow plow meeting the following minimum specifications:" (Emphasis supplied.)

Page 4 of the IFB required bidders to list the make, model, number, and year of the front end loaders being offered.

By letter dated May 10, 1976, the Department of the Interior (Interior) informed our Office that the BIA had canceled the subject IFB stating that "the urgent need for the front-end loaders covered by the IFB now no longer exists." Interior reports that a copy of this letter was sent to Lunstra and Evans.

In a letter dated June 28, 1976, Interior referred to its May 10, 1976, letter advising that the BIA no longer needed the equipment originally scheduled for procurement. It was stated in the letter that the BIA's plans for meeting its needs were changed by the delays which occurred in attempting to resolve the protest against award. Interior reports that these delays required alternative methods to accomplish the work for which the loaders in question were originally requisitioned. Because of this, Interior states that the contracting officer determined that it would be in the best interests of the Government to cancel the IFB and if the equipment is still required for 1976 winter or spring/summer 1977 programs, and if funds are available, to advertise the new requirement in the fall of this year. Interior also contends that Evans' protest against the cancellation of the IFB is untimely under our Bid Protest Procedures, 4 C.F.R. § 20 (1976), specifically, section 20.2(b)(2), which provides that:

"\* \* \* bid protests shall be filed not later than 10 days after the basis for the protest is known or should have been known, whichever is earlier."

By letter dated June 11, 1976, received in our Office June 15, counsel for Evans protested the IFB cancellation and stated that it had received notification of the May 10, 1976, cancellation on May 12. Counsel for Evans takes issue with Interior's statement that "the supplies or services are no longer required" and contends that any cancellation of the IFB is prejudicial to its firm. Evans argues that there is no compelling reason to cancel the IFB and therefore the cancellation is improper under Federal Procurement Regulations (FPR) § 1-2.404-1 (1964 ed. amend. 121).

With regard to the question of timeliness, by letter dated June 16, 1976, counsel for Evans contends that we should not consider the protest untimely since the protest concerning the cancellation was an appropriate submission in connection with the pending protest. Furthermore, it is argued that since the agency delayed submitting its response to the protest for more than 2 months, Evans should not be penalized because it was approximately 2 weeks late in protesting. Moreover, Evans contends that since a resolicitation has not been issued, Evans could timely raise the issue until 10 days after receipt of notice of the resolicitation.

As noted above, the applicable section (20.2(b)(2)) of our Bid Protest Procedures provides that to be timely a bid protest must be filed not later than 10 days after the basis of protest is known. Since cancellation of the solicitation is the basis of protest, and notice thereof was received on May 12, receipt of the protest in our Office on June 15, 1976, was untimely under the cited section. We do not find that any of the reasons advanced by Evans for concluding otherwise are valid. The fact that protests were pending under the subsequently canceled solicitation is not an exception to and does not operate to toll the timeliness rules. While the Bid Protest Procedures state a goal of 25 days for an agency to submit a report on a protest, we do not believe an agency's failure to comply therewith provides a basis to waive an otherwise mandatory provision of those Procedures. Lastly, Evans' protest is against the cancellation and not any resolicitation; therefore, the timeliness of the protest must be measured from that date and not from the date of any resolicitation.

Finally, counsel for Evans contends that even if the protest is untimely, the IFB cancellation raises a significant issue of procurement practice which our Office should consider under § 20.2(c) of our Bid Protest Procedures, which provides: "The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely."

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As stated in 52 Comp. Gen. 20, 23 (1972), "Issues significant to procurement practices or procedures" refers not to the sum of money involved, but to the presence of a principle of widespread interest." We have defined "significant issues" to be those that present questions of widespread procurement interest. MB Associates, B-184564, September 24, 1975, 75-2 CPD 181. The propriety of canceling an invitation has been considered by our Office on many previous occasions; therefore, we do not believe the issue raised may be considered significant to procurement practices or procedures. Accordingly, Evans' untimely protest will not be considered on the merits.

In view of the cancellation, Lunstra's protest is rendered moot and will not be further considered. See Suburban Industrial Maintenance Company, B-185515, March 24, 1976, 76-1 CPD 193.

However, we note that in a memorandum dated April 19, 1976, from the Director, Office of Management Services, to the Commissioner of Indian Affairs, it was recommended that the solicitation be canceled because of this ambiguity and because of an unrealistic delivery schedule, although the reason stated in the May 10, 1976, letter from Interior indicates a different reason. In this connection, we also note that FPR § 1-2.404-1(b)(1) provides that an IFB may be canceled after bid opening but prior to award where the specifications are inadequate, ambiguous, or otherwise deficient. It would appear, therefore, that there was in fact a valid basis for canceling.

  
Deputy Comptroller General  
of the United States