

DECISION

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

FILE: B-185848

DATE: February 26, 1976

MATTER OF: Service Management Corporation

DIGEST:

Protest based on ground that solicitation did not contain clause providing for reimbursement of employee accrued sick leave is untimely under GAO Bid Protest Procedures as it was not filed prior to bid opening.

By letter of January 30, 1976, Service Management Corporation (SMC) protested the absence of a clause in the National Aeronautical Space Administration (NASA), Lewis Research Center's invitation for bids (IFB) 3-79792, providing for the inclusion of the cost of employee accrued sick leave as a contract item of "cost adjustment". The attachments furnished by SMC with its protest indicate that at the site visit/bid conference held on January 6, 1976, a bidder requested information regarding the amount of employee accrued sick leave to be assumed by the awardee, but was informed by NASA that it was contrary to the policy of the incumbent contractor to make such information available. The protester contends that since the IFB solicited firm fixed prices for the services being procured, a provision for the adjustment of the contract price to account for the sick leave factor should have been included in the solicitation. We have been informed by NASA that bids were opened on January 26, 1976.

Section 20.2(b)(1) of this Office's Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides that "protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed [received at GAO] prior to bid opening * * *." Since we did not receive SMC's protest until February 3, 1976, some 6 [working] days after bid opening, its protest must be considered untimely.

Consequently, we must decline to rule on the merits of the protest.

Milton Fowler
for Paul G. Dembling
General Counsel