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DECISION

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

*L. Kozlowski
Page 1*

**FILE: B-187310
B-187403**

DATE: January 14, 1977

MATTER OF: Uniroyal, Inc.—request for reconsideration

DIGEST:

Since protester does not advance any additional facts or legal arguments which show that earlier decisions were erroneous, prior decisions holding protests untimely are affirmed.

Uniroyal, Inc. (Uniroyal), has requested reconsideration of our decisions of October 5, 1976 (B-187310), and November 2, 1976 (B-187403), which raised the same issue on different procurements. Our Office declined to consider the merits of the protests as both were determined not to have been timely filed in our Office.

Uniroyal protested the award under both solicitations on the ground that evaluation should have been performed on a cost-per-square-foot basis because of the size tolerances allowed for the plastic sheets. We found that in both instances the solicitations provided for evaluation on a cost-per-sheet rather than cost-per-square-foot basis. Accordingly, our decision of October 5, 1976, and subsequent reconsideration of November 2, 1976, held that Uniroyal's protest involved an alleged deficiency in the method of evaluation stated in the request for proposals and should have been protested prior to the closing date for submission of proposals to have been timely filed. In our decision of November 2, 1976, we likewise found Uniroyal's protest untimely on the same basis as it was filed after bid opening. 4 C.F.R. § 20.2.2(b)(1) (1976).

The protester now alleges that it had been the prior practice of the Defense Supply Agency to evaluate prices on the basis of cost-per-square-inch even though not explicitly so stated in the solicitations. In this regard, Uniroyal has stated that the evaluation criterion set forth in two DSA procurements in 1973 and 1975 was on the basis of price-per-square-inch because of varying sheet size. Additionally, Uniroyal states a subsequent procurement, dated October 20, 1975, did not contain any notation on the method of evaluation. From this, Uniroyal contends it was reasonable to assume that the procurement would be evaluated on the price-per-square-inch basis since there was no notation to the contrary.

B-187310
B-187403

The solicitations in question were issued May 25, 1976, and July 30, 1976, respectively, and provided for evaluation and award on a cost-per-sheet basis. Therefore, any contrary assumption as to the method of evaluation and award was at the bidder's risk. Furthermore, as we held in the prior decisions, any protest as to the stated method of evaluation and award was required to be filed prior to the closing date for receipt of proposals or prior to bid opening.

Since Uniroyal has not advanced additional facts or offered any arguments of law that demonstrate our initial decisions were in error, our decisions of October 5 and November 2 are affirmed.


Deputy Comptroller General
of the United States