

5547

Washington

PL 1

DECISION



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

FILE: B-190611

DATE: March 5, 1978

MATTER OF: Asahi Glass Company, Ltd.

DIGEST:

Prime contractor's protest against proposed prime awards is untimely filed with GAO since grounds of protest (namely: proposed awards exceed "percentage capacity" and "processes" provisions of solicitation; protester's proposal offered sufficient capacity and reasonable prices to sustain award within "percentage capacity" and "processes" provisions of solicitation contrary to procuring agency's views) were known no later than October 5, 1977, when company received announcement of contested awards and ranking of proposals yet protest was received more than 10 working days after October 5.

A protest has been received from Asahi Glass Company, Ltd., against the Department of the Interior's selection of two proposed contractors for award of contracts under solicitation No. PS-7186, Yuma Desalting Plant.

The company admits it received the Department's announcement of the successful offerors on October 5, 1977, along with a further announcement that the successful offerors were "each to receive 23 and 77 percent of the capacity of the project." The Department also informed the company of the "ranking of [the] seven offerors" competing in the procurement. On November 5, 1977, the company received a notice from the Department "requesting a 90-calendar-day extension of our bid acceptance period in order to allow the Government sufficient time to resolve protest actions against the award of this negotiated contract."

B-190611

The company's grounds of protest may be summarized as follows:

- (1) The proposed awards for "23 and 77 percent of the capacity of the project" based on only one process (spiral wound reverse osmosis system) violate solicitation provisions which provided that the Department would not award more than 60 percent of the capacity to any one company and that a minimum of two processes would be selected for awards;
- (2) The only qualification on the Department's intent to award no more than 60 percent of the capacity to any one company and to award for a minimum of two processes was that the Government would not do so in the absence of "sufficient quantity and prices" to make the awards possible;
- (3) Asahi's proposal clearly offered "sufficient quantity" (capacity) and (reasonable) "prices";
- (4) In addition to having offered sufficient quantity and reasonable prices, the company's fourth-ranked proposal was competitive from a technical viewpoint.

The bases of the company's protest were known to it no later than October 5, 1977, when it received the Department's announcement of the awards in question along with details as to the ranking of all the proposals. Notwithstanding these circumstances, the company delayed filing its protest with our Office and the Department until December 9, 1977, or considerably more than 10 working days after the date the bases of protest were known.

The requirement (set forth in 4 C.F.R. § 20.2(b)(2) (1977 ed.)) that protests of non-solicitation irregularities be filed within 10 working days from the date the bases of protests are known or should have been known is for application. Since the protest was not filed timely either with the agency or our Office, it is not for consideration under our procedures.

B-190611

Protest dismissed.

Paul G. Dembling
Paul G. Dembling
General Counsel