

7248 M. Harker #1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-192302

DATE: August 8, 1978

MATTER OF: Sencenbaugh Wind Electric

DIGEST:

Protest against alleged improprieties in solicitation not filed with contracting agency or GAO prior to closing date for receipt of proposals is untimely.

Sencenbaugh Wind Electric (SWE) has protested Federal Supply Schedule contract No. GS-00S-64642 as awarded to SWE, for the period of June 1, 1978, through April 30, 1979, pursuant to request for proposals (RFP) No. FPGG-X-36310-N-1/31/78, issued by the General Services Administration, Federal Supply Service (GSA), for solar and wind energy systems, subsystems and components. Closing date for receipt of proposals was January 31, 1978.

On January 24, 1978, SWE submitted its proposal which contained several exceptions to certain clauses in the RFP. On or about March 16 and April 18, 1978, clarifications and modifications of the proposal not relating to the exceptions were made by SWE. These latter changes were acceptable to GSA and on June 1, 1978, GSA sent to SWE a notice of contract award and the contract. GSA had unilaterally altered that portion of SWE's initial proposal which contained exceptions by substituting language which in GSA's opinion made the proposal acceptable under the terms of the RFP. SWE objected to this unilateral action by letter of June 13, 1978. Consequently, GSA advised SWE, in a June 21, 1978, letter as follows:

"Since you indicate in your letter that you cannot and will not comply with clause number FPG-2 (11/75), entitled 'Prices' contained in page 5 of the contract, you are hereby notified that said Contract Number GS-00S-64642 is canceled, effective August 19, 1978.

"This action is taken in compliance with the 'Cancellation' clause number 322 (3/76) contained on page 14 of referenced contract."

We note that SWE filed its protest with our Office on July 3, 1978.

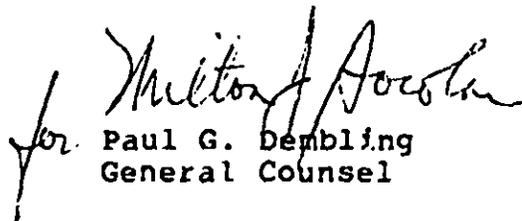
SWE contends that "this contract [is] poorly constructed, discriminatory against small business, and requir[es] contractual obligations upon the awardee which are not consistent with normal business practice." SWE repeats in this protest the objections to the requirements contained in the RFP to which the firm took specific exception in its proposal and in the June 13, 1978, letter to GSA, as follows:

(1) Paragraph 187(a), page 22--"Prices offered must cover delivery to destinations located within the 48 contiguous States and the District of Columbia * * *"

(2) Paragraph FPG-7, page 14--"* * * adjustments occasioned by * * * defective parts may be made at the contractor's expense, including labor, parts, and transportation costs, if any," and

(3) Paragraph FPG-2, page 5--"Established prices shall remain firm and not subject to upward revision during the term of the contract."

Our Bid Protest Procedures, 4 C.F.R. §§ 20.2(a) and (b)(1) (1977), require that protests based on alleged improprieties in a solicitation which are apparent, as here, prior to the closing date for receipt of proposals shall be filed with the agency or our Office prior to the closing date. Consequently, since SWE's protest was not filed with GSA or our Office prior to the closing date, the protest is untimely and not for consideration on the merits.


for Paul G. Dembling
General Counsel