

DECISION



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

8187

FILE: B-192346

DATE: November 3, 1978

MATTER OF: AAI Corporation

DIGEST:

1. Protest filed after bid opening against allegedly ambiguous data package and other deficiencies apparent in solicitation is untimely and not for consideration under section 20.2(b)(1) of GAO Bid Protest Procedures.
2. Where protest is untimely, request for conference is denied.
3. Request that GAO direct contracting agency to issue stopwork order to contractor pending decision is academic where protest is not for consideration.

By letter dated October 9, 1978, AAI Corporation protests against the award of a contract to Martin Electronics, Inc., under invitation for bids (IFB) No. DAAK10-78-B-0075, issued by the United States Army Armament Research and Development Command, Dover, New Jersey, on April 14, 1978. This solicitation was the subject of our decision in the matter of E. Walters & Company, Inc., B-192346, September 25, 1978, 78-2 CPD 228, in which we denied a request by E. Walters & Company to allow an upward correction of its alleged erroneous bid.

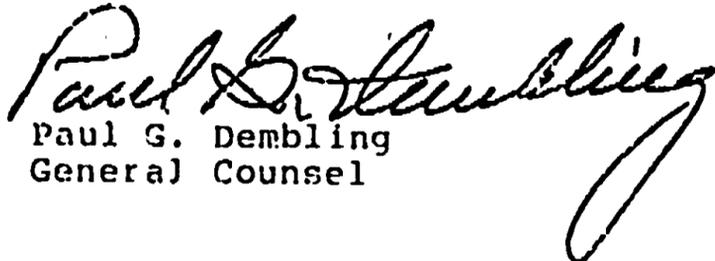
Generally, AAI is protesting on the bases that the data package included in the solicitation is ambiguous, that there are numerous conflicts between the drawing package and the test and performance requirements of the contract, and because the present state of development and existing data package are inadequate to justify the use of an IFB and a fixed-price contract. AAI first pointed out these alleged deficiencies, but did not protest, in a TWX to our Office dated July 28, 1978, as an

interested party on the request of E. Walters & Company for upward correction of its bid which was the subject of our September 25, 1978, decision. AAI requests that we direct the Army to stop all work being performed under the contract pending our decision on AAI's protest. AAI also requests a conference to discuss the merits of its protest.

Bid opening took place on June 9, 1978, but AAI did not object to the alleged deficiencies in the solicitation at any time prior to bid opening. Under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), a protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be considered by our Office. Since, in this case, the issues were apparent prior to bid opening but were not raised until after bid opening, the protest was untimely filed and will not be considered on the merits. See, for example, Lamson Division, B-190752, December 14, 1977, 77-2 CPD 463. In view of the above, the protester's request for a conference is denied. Rushon Industrial Construction, B-191825, June 12, 1978, 78-1 CPD 427.

Since the protest is not for consideration on the merits, AAI's request that the Army be directed to issue a stopwork order to Martin Electronics, Inc., pending our decision on the protest is academic. See Graphical Technology Corporation, B-181723, March 27, 1975, 75-1 CPD 183, at page 12.

The protest is dismissed.


Paul G. Dembling
General Counsel