

W. W. Thompson
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GAO 45



DECISION

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

8785

FILE: B-193527

DATE: January 5, 1979

MATTER OF: General Leasing Corporation - *CNG 2263*

DIGEST:

A [Protest contending that solicitation should not be used to purchase equipment because it is allegedly covered under protester's present contract is based on patent solicitation impropriety and must be filed with either GAO or contracting agency prior to closing date for receipt of initial proposals. Protester had both actual and constructive notice of solicitation, but did not file protest until after closing date; therefore, protest is untimely. *CNG 2263*

General Leasing Corporation (General Leasing) has protested the issuance of request for proposals (RFP) No. GSA-CDPR-C-00010N for automated data processing equipment (ADPE) for the Defense Logistics Agency Personnel Support Center (DLA), Philadelphia, Pennsylvania, by the General Services Administration (GSA). *DLG 00532*
General Leasing contends that the equipment requested falls within the scope of its present ADPE contract for DLA, and therefore should be purchased under that contract. *AGC 17*

The following synopsis appeared in the Commerce Business Daily (CBD) on June 20, 1978:

"70--IBM 370/158-J or ITEL AS5/1 or IBM 3031-2 for the Defense Logistics Agency, DPSC, Philadelphia, PA. 2 ea. System life is 38 months. RFP CDPR-C-00010N will be issued on or about 15 Jun 78. This solicitation will be awarded under GSA's Master Terms and Conditions Program. (166) General Services Administration,

[Protester's Contention that
Equipment Requested ~~03164~~
in Solicitation ~~AVAILABLE~~
NEW FALLS Within Scope of Present Contract]

dec

Automated Data & Telecommunication
Service, OADMS, ADP Procurement
Division, (CDPR) Attn: W. Clore,
Room G-20A, 18th & F Sts., Washington,
D. C. 20405, Tel: 202/566-0771."

Additionally, we have been informed by GSA that General Leasing was mailed a copy of the RFP, which was issued on June 20, 1978. The RFP stated that the expected closing date for receipt of initial proposals would be August 15, 1978.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), provides that:

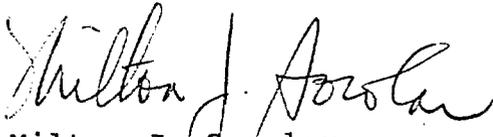
"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

Section 20.2(a) of our Bid Protest Procedures urges protesters to seek to resolve their complaints initially with the contracting agency. If a protest is filed initially with the contracting agency, GAO will consider a subsequent protest only if it is filed here within 10 working days of initial adverse agency action and the agency protest was filed in accordance with our timeliness standards.

General Leasing's protest is essentially one based on an alleged apparent solicitation impropriety, since it is protesting the issuance of any solicitation for the equipment in question. General Leasing was on constructive notice of the grounds of its protest when the CBD synopsis was published, and it apparently had actual notice soon after that, since a copy of the RFP was sent to General Leasing. Therefore, in order to be timely, a protest must have been filed either with GAO or GSA prior to August 15, 1978, the initial closing date indicated in the RFP.

We have been informed that General Leasing first offered to provide the equipment under its existing contract, on November 6, 1978. GSA refused the offer by letter dated November 28, which General Leasing received on November 30. General Leasing's protest to GAO was filed on December 4, 1978; over 3-1/2 months late. Even assuming that General Leasing's offer to GSA of November 6 was a protest of the solicitation, it was filed over 2-1/2 months late.

Accordingly, the protest is dismissed. This decision of course, does not prejudice any rights that General Leasing may have under its current DLA contract.



Milton J. Socolar
General Counsel