

P. Roberts  
PT-11

1st Tim  
Q.C. Nick

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

8958

FILE: B-193046

DATE: January 24, 1979

MATTER OF: Otis Elevator Company

- CNO 66996

DIGEST:

*A*  
*te* [Protest by large business concern against solicitation restricting procurement as total small business set-aside] filed after bid opening date is untimely filed pursuant to GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1).

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Otis Elevator Company protests the Veterans Administration's (VA) issuance of Invitation for Bids (IFB) No. 541-2-79 as a total small business set-aside and VA's subsequent rejection of its bid as nonresponsive. Otis argues that it was the lowest responsible and qualified bidder and, but for its large business size status, would have received the instant contract award for the maintenance of elevators and dumbwaiters at the Cleveland, Ohio, VA Hospital.

The VA takes the position that the Otis protest is untimely filed and not entitled to consideration on the merits because the basis for protest was apparent from the solicitation and the protest was filed after bid opening. In this regard, our Bid Protest Procedures at 4 C.F.R. § 20.2(b)(1) provide in pertinent part as follows:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening \* \* \* shall be filed prior to bid opening \* \* \*."

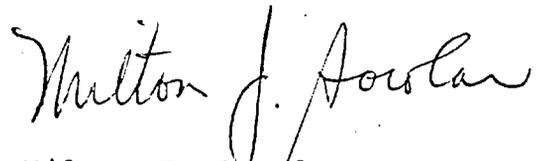
Since the total small business set-aside was apparent from the solicitation and the record does not show that Otis protested this alleged impropriety until after bid opening, its protest is untimely.

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Decision

RCA Corporation; Norman R. Selinger & Associates, Inc.,  
B-190247, September 21, 1978, 78-2 CPD 213. The fact  
that Otis could not have known until after bid opening  
that its bid was low does not justify its failure to  
protest, prior to bid opening, its more basic objection  
to the solicitation provision which rendered it in-  
eligible for the procurement.

Therefore, the protest will not be considered on  
its merits.



Milton J. Socolar  
General Counsel