

Protest

DECISION



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

9652

FILE: B-194195

DATE: March 27, 1979

MATTER OF: Washex Machinery Corporation

DLG 01390

DIGEST:

Protest filed after bid opening alleging that IFB specifications were unduly restrictive is untimely since basis of protest was apparent prior to bid opening.

Washex Machinery Corporation (Washex) has protested the rejection of its bid for being nonresponsive to invitation for bids (IFB) No. N001-4-78-B-0757, issued by the Department of the Navy, Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. Washex maintains that the specifications of the IFB which solicited washing machines for use aboard ships were unduly restrictive.

AGC 00238

The Navy issued the IFB on August 17, 1978. Washex alleges that upon receipt of the IFB it noticed that the IFB contained two defects: the overall dimensions allowed for a 60 pound capacity machine were less than those for a 50 pound machine and the specified cylinder volumes were restrictive of competition.

Washex asserts that it brought these alleged defects to the Navy's attention and on September 6, 1978, the Navy issued an amendment increasing the overall machine dimensions for a 60 pound capacity machine and decreasing the cylinder volume requirements. Washex further asserts that on October 4, 1978, the Navy issued a second amendment which reinstated the allegedly restrictive cylinder volume requirement. Washex states that although its bid was \$33,800 lower than the next low bid, its bid was rejected as nonresponsive to the cylinder volume requirement. Washex does not dispute that its machine did not meet this requirement but maintains that the requirement was unduly restrictive.

[Protest of REJECTION of Bid as Nonresponsive]

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Under Our Bid Protest Procedures, a protest based upon an alleged impropriety in a solicitation which is apparent before bid opening must be filed either with the contracting agency or our Office prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1978). We have been advised by the Navy that bids were opened on October 18, 1978, and that Washex did not protest the reinstatement of the allegedly restrictive cylinder volume requirement prior to bid opening. As Washex did not file a protest with the Navy or our Office prior to bid opening (we received Washex's protest on February 23, 1979), its protest is untimely and will not be considered. Environmental Tectonics Corporation, B-193018, February 15, 1979, 79-1 CPD ___.

The protest is dismissed.


Milton J. Socolar
General Counsel