

DECISION



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

12202

TPH II

FILE: B-196717

DATE: December 5, 1979

MATTER OF: Cryo-Chem, Inc.

D 3457

DIGEST:

1. GAO will decide protest without benefit of agency report where it is clear from protester's initial submission that protest is without legal merit.
2. Protest of agency's decision to postpone opening of bids is without merit. GAO is not aware of any requirement that there be an opening of bids when it is determined to be in best interest of Government to postpone bid opening.
3. Protest of agency's rejection of protester's bid as unreasonably high under earlier solicitation is untimely where filed more than 10 working days after protester learned of reason its bid was rejected.

2
/ Cryo-Chem, Inc. (Cryo-Chem) has protested the Department of the Army's decision to extend bid opening under invitation for bids (IFB) No. DAAJ09-79-B-5182 until November 5, 1979. Bid opening was originally scheduled for 2:00 p.m. on October 29, 1979, but was postponed by the Army 30 minutes before the scheduled opening. Since it is clear from Cryo-Chem's initial submission that its protest is without merit we have reached our decision without benefit of a report from the Army. See Alpha Sigma Investment Corp., B-194629.2, May 17, 1979, 79-1 CPD 360.

[Protest Involving Bid Rejection]

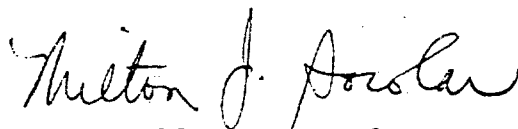
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Cryo-Chem asserts it first learned of the extension when it called the contracting activity approximately one hour after the scheduled opening and it was not until the following day that it received formal notification of the extension. Cryo-Chem states it prepared and mailed its bid in good faith and in sufficient time to reach the contracting activity in time for the original bid opening, and should have been afforded the same amount of additional time as other bidders. Cryo-Chem further states this was the second time it submitted a bid for the same requirement and that its bid under a prior solicitation was rejected for being too high. In this regard, Cryo-Chem disputes that its bid price was too high and argues that it is unfair and contrary to the competitive bidding system to make "repetitive solicitations" for the same requirements after the bid prices of bidders have been exposed.

We have been advised that Cryo-Chem's bid was the only bid received under the current solicitation. Under these circumstances, we do not believe Cryo-Chem has any reason to object to the postponement. Moreover, we know of no legal requirement that there be an opening of bids when it is determined to be in the best interest of the Government to postpone the opening. B-165862, February 27, 1969; B-158464, March 28, 1966.

As regards Cryo-Chem's objections concerning the rejection of its bid under the prior solicitation, we note that Cryo-Chem was notified of the rejection and the reason therefor sometime during September. Since Cryo-Chem's protest was not received until November 8, 1979, clearly more than 10 working days after it knew of the rejection of its bid and the reason therefor, the protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1979), and will not be considered.

The protest is denied in part and dismissed in part.



For the Comptroller General
of the United States