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ms. McConnell

DECISION



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

FILE: B-201837 DATE: June 16, 1981

MATTER OF: British Steel Corporation, Inc.

DIGEST:

1. Protest based on usefulness and clarity of IFB provision requiring suppliers of foreign products to specify import duty is untimely when filed after bid opening.
2. Accuracy of bidder's import duty calculation will not be questioned where duty is waived and amount of duty is subtracted from bid price prior to award, thereby not affecting relative standing of bidders.

British Steel Corporation, Inc. (British Steel), protests the award of a contract by the Defense Logistics Agency's Defense Construction Supply Center to supply steel tubing under invitation for bids (IFB) DLA700-81-B-0271.

British Steel asserts two bases for its protest. First, it alleges that the requirement in the IFB that suppliers of foreign products specify the import duty applicable to their products is purposeless and misleading where payment of the duty is thereafter waived and the amount of the duty is subtracted from the bid price without regard to the duty calculation's accuracy. In addition, British Steel complains that Rio Supply Company (Rio Supply), the supplier awarded the contract, underestimated the amount of the applicable import duty and thus Rio Supply's bid is nonresponsive. The protest is dismissed in part and denied in part.

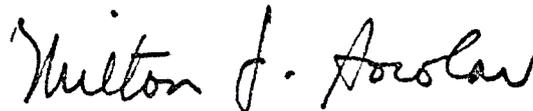
[Protest of IFB Requirements]

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British Steel's complaint regarding the usefulness or clarity of the duty calculation requirement set forth in the solicitation is untimely. Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), require that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening must be filed prior to bid opening. British Steel filed its protest with this Office after award of the contract to Rio Supply.

However, British Steel asserts that it did not file a protest prior to bid opening because it did not then know that any bidder would submit an incorrect duty calculation. The record clearly shows that British Steel questions the wisdom of the duty calculation requirement itself. That requirement was clear on the face of the solicitation and thus any complaint based on that requirement was subject to the above filing limitation.

In addition, Rio Supply's bid clearly responded to the solicitation's duty calculation requirement. The question of whether Rio Supply calculated the applicable duty correctly is academic where the amount of the duty does not affect the relative standing of the bidders. See R. H. Pines Corporation; TI Steel Tubes (USA) Inc., B-198608, B-198624, B-198703, December 24, 1980, 80-2 CPD 442.



Acting Comptroller General
of the United States