

117156

20385

Martin

DECISION



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

FILE: B-205011 **DATE:** December 28, 1981

MATTER OF: Habitation Technology, Inc.

DIGEST:

1. Where evidence shows protest against improprieties in invitation for bids was received at GAO before the bids were opened, protest is timely notwithstanding the protest was not time/date stamped at GAO until after bids were opened.
2. Where prior to bid opening potential bidder raises, and contracting officer supplies answers to, approximately 100 questions concerning IFB specifications, firm does not meet its burden of proof in subsequent protest to GAO by simply alleging that "a few" of its questions had been answered satisfactorily and "other" answers were "evasive" without specifying in what respect the IFB remained defective.

Habitation Technology, Inc. (Habitech) protests that invitation for bids No. F05600-81-B-0040 for the maintenance of military family housing at Lowry Air Force Base, Colorado is unclear, incomplete and precludes a reasonable bid. The Air Force contends the protest is untimely under our Bid Protest Procedures, which require that protests based on alleged improprieties apparent on the face of the invitation for bids must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). We disagree and find the protest timely, but for the reasons discussed below, we summarily deny the protest for its failure to demonstrate that the protester is entitled to any remedy.

Prior to bid opening, which was scheduled for 10:00 a.m. Mountain Daylight Time (MDT) on September 30, 1981, Habitech, the incumbent contractor, submitted two letters totaling 12 pages to the contracting officer requesting clarification of various parts of the solicitation. On September 15, 1981, the Air Force sent to all bidders 17 pages of questions and answers in which it responded to each question asked by Habitech as well as several more apparently raised by other potential bidders. In its protest to our Office, Habitech states that "only a few" of its questions "were substantially responded to," that "other" answers were "evasive" and that it was assured by the Air Force that bids would not be opened until a satisfactory response had been made to all of its questions. Habitech also states it was not informed until the morning of bid opening that no further clarifications would be made and that it immediately sent a telegraphic protest to our Office.

The bids were opened as scheduled at 10:00 a.m. MDT on September 30, 1981. Our copy of Habitech's telegram was time/date stamped by our Office at 9:45 a.m., October 1, 1981. Since this was the day after bid opening, the Air Force contends the protest was not timely filed and therefore should be dismissed. However, our time/date stamp is only prima facie evidence of the time of receipt in our Office. Metal Art, Inc., B-194181, July 11, 1979, 79-2 CPD 25. Our copy of Habitech's telegram also indicates on its face that it was received at the TWX machine in our building at 11:50 a.m. Eastern Daylight Time, September 30, 1981, which was ten minutes before the bid opening at Lowry Air Force Base. Therefore, we consider Habitech's protest to be timely.

Here, the protester asked some 100 questions prior to bid opening concerning specification provisions it contended were unclear or ambiguous. In response, the Air Force distributed to all potential bidders well in advance of bid opening a 17-page document in which it addressed, in some fashion, those questions as well as others apparently raised by other firms. From our review, it appears that the Air Force was fully responsive to the questions raised. The protester's vague statements about the inadequacy of the responses do not establish that any of the answers might have been insufficient to permit intelligent competition.

The protester has the burden of affirmatively proving its case. Diversified Computer Services, Inc., B-201681, July 7, 1981, 81-2 CPD 13. Our Office does not conduct investigations under its bid protest function for the purpose of establishing the validity of a protester's speculation or generalizations. See Alan Scott Industries, B-201743, et al., March 5, 1981, 81-1 CPD 159; Consolidated Services, Inc. of Charleston, B-199407, September 21, 1981, 81-2 CPD 228. Where a potential bidder seeks clarification of a large number of specification provisions and the agency responds to those questions, we do not believe the bidder satisfies its burden of proof in a later protest to our Office simply by asserting that it is dissatisfied with the agency's answers. Here, the protester indicates that a few of its questions were answered to its satisfaction, but it does not state which ones. It states "other" answers were evasive, but does not identify which ones and why it considers them to be so. Habitech has made no attempt to explain or support its general allegation that the Air Force response was inadequate, and has left us and the agency to guess at what deficiency the protester still perceives. Under these circumstances, we believe Habitech has failed to meet its responsibility to affirmatively establish its position sufficiently to warrant the expenditure of the time and money which a request for a report from the agency would require.

The protest is summarily denied.

Harry R. Van Cleave
For Comptroller General
of the United States