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DECISION



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

FILE: B-203235:4

DATE: January 5, 1982

MATTER OF: Bell & Howell Company

DIGEST:

1. Protest against alleged improprieties in solicitation filed with bid is untimely since GAO Bid Protest Procedures require filing prior to bid opening, 4 C.F.R. § 21.2 (1981).
2. Although protester was not specifically informed of the contracting agency's rationale for the protested solicitation requirement until several months after bid opening, the record shows that the protester had questioned the agency's need for the requirement at a much earlier date but failed to diligently seek relevant information needed to determine whether a basis for protest existed. Therefore, protest is untimely because it was filed more than 10 days after protester knew or should have known of basis for protest.

Bell & Howell Company (BHC) protests the award of any contracts under invitation for bids (IFB) No. NCO244-81-B-2251 issued by the Naval Supply Center, San Diego, California. The IFB was for quantities of microfiche reader/printers with related accessories, and microfiche readers.

We find the protest untimely.

BHC contends that the Navy erroneously required the reader/printer to be sheet-fed. According to BHC, only one company on the market makes a sheet-fed reader/printer and that the IFB requirement thus disqualified all other bidders, including BHC. BHC further contends that the requirement was unnecessary to meet the needs of the Government for horizontal and vertical orientation of images because roll-fed reader/printers

could have performed this function just as well as sheet-fed machines. In this regard, BHC alleges that its roll-fed reader/printer prints vertically or horizontally more easily and conveniently than a sheet-fed reader/printer.

The Navy notes that BHC submitted a letter dated May 8, 1981, with its bid which stated in part as follows:

"We appreciate the opportunity to bid on the attached solicitation #NOO244-81-B-2251, however, we do object to the bid specifications. The bid specifies a sheet feed reader printer and to the best of our knowledge there is only one sheet fed reader printer on the market. In that case, it would seem to us that this should have been a sole source procurement. In addition, our experience shows that a roll feed process is more reliable and flexible as opposed to a sheet fed system. It should be noted that we have dropped the sheet feed reader printer from the Bell & Howell product line. We'd be happy to discuss this with you at your convenience."

The Navy argues that BHC's objection to the requirement for a sheet-fed reader/printer is untimely because it questioned the validity of a solicitation specification after the June 3, 1981, bid opening. We agree with the Navy.

Our Bid Protest Procedures, 4 C.F.R. part 21 (1981), require that protests based on alleged improprieties in the solicitation, which are apparent prior to bid opening, be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). BHC's protest against the sheet-fed requirement was raised, at the earliest, at the time of bid opening, if the letter submitted with its bid is construed as a protest to the contracting agency. We have held, however, that a protest of an apparent impropriety in a solicitation is untimely where the protest is first submitted with the protester's bid. See American Can Company - Reconsideration, B-186974,

August 19, 1976, 76-2 CPD 178. A bidder who participates, without objection, in a procurement through the point of bid opening is deemed to have acquiesced in the terms and conditions set out in the solicitation. Ven-Tel, B-203397, July 1, 1981, 81-2 CPD 3.

BHC contends, however, that it has submitted a timely protest against the allegedly erroneous assessment by the Navy of the capabilities of the roll-type reader/printer. BHC alleges that the first notification that it had of the Navy's rationale for specifying a sheet-fed reader/printer was on August 26, 1981, when it received a copy of that agency's report on the protest filed by National Micrographics Systems, Inc., against the same IFB requirement (National Micrographic Systems, Inc., withdrew its protest on August 27, 1981.). BHC argues that its September 10, 1981, letter to us formally protesting the sheet-fed reader/printer requirement was filed within 10 working days after BHC learned of the agency's "mistaken" reasons for such a requirement. BHC asserts that up to then it did not know that the Navy's primary reason for specifying a sheet-fed reader/printer was the belief that this type of printer/reader would permit both horizontal and vertical orientation of images.

We find BHC's protest on this ground to be untimely also. BHC's May 8, 1981, letter shows that prior to bid opening BHC objected to the IFB's requirement for a sheet-fed reader/printer and that the company believed that its roll-fed reader/printer was "more reliable and flexible" than a sheet-fed one. Yet, BHC submitted a bid without attempting to contact the contracting officer to ascertain the basis for the IFB requirement. Instead, over 2 months after bid opening, BHC protested to this Office the agency's need for a sheet-fed reader/printer because of certain statements made in the report of the Navy on another bidder's protest.

Our Bid Protest Procedures require that a protest be filed with our Office within 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1981). However, we held that it is incumbent upon a potential protester to diligently seek whatever relevant additional information is needed to determine whether a basis for protest exists.

National Council of Senior Citizens, Inc., B-196723,
February 1, 1980, 80-1 CPD 87. A potential protester
cannot sit idly by and wait for information that it
could have obtained much earlier and then expect our
Office to consider timely a protest based on that
information. See Policy Research Incorporated,
B-200386, March 5, 1981, 81-1 CPD 172. Because BHC
was not diligent in seeking the information upon which
its protest is based, we consider the protest untimely.

BHC's protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel