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**DECISION**



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

**FILE:** B-206533

**DATE:** June 1, 1982

**MATTER OF:** Republic Steel Corporation

**DIGEST:**

Protest of alleged solicitation defect apparent on face of solicitation is untimely where not filed until after bid opening.

Republic Steel Corporation protests the award of any contract under Invitation for Bids No. DACA65-82-B-0007 issued by the Army Corps of Engineers for the construction of a munitions storage facility at Langley Air Force Base, Virginia. Republic contends that the solicitation is improper because it provides that bids from bidders which are not licensees under patent number 3,508,406 will be evaluated by adding an amount equal to that which the United States is obligated to pay as a licensee under the patent. The patent applies to steel oval-arch structures to be used in the construction of the munitions storage facility. Republic argues that the solicitation violates various decisions of our Office which hold that agencies should "evaluate bids without regard to possible patent infringement."

Our Bid Protest Procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). Although bids submitted in response to the IFB were opened on February 23, 1982, Republic's protest was not filed until February 24, 1982. It is therefore untimely and will not be considered.

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

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