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DECISION



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

FILE: B-207823

DATE: July 9, 1982

MATTER OF: Precision Dynamics Corporation

DIGEST:

Protest alleging defects which are apparent on the face of a solicitation, filed with a bid or included in a proposal, will not be considered a timely protest to the contracting agency, and any subsequent protest to GAO will be dismissed.

Precision Dynamics Corporation protests what it alleges are unduly restrictive specifications in a request for quotations, No. DLA 120-82-Q-A372, issued by the Defense Personnel Support Center (DPSC). We dismiss the protest as untimely.

The firm alleges that the agency's specifications for pen-type surgical skin markers are unduly restrictive, causing the Government to pay a higher price than justifiable for this item. The solicitation requires that the markers have a protective cap, graduated from 0 to 8 centimeters in .5 centimeter increments, which also serves as a ruler. According to Precision Dynamics, only Devon Industries, Inc. makes this type of marker; its own product includes a separate ruler, graduated from 0 to 15 centimeters in .5 centimeter increments. Precision Dynamics argues that this product is equal or superior to the one specified.

In submitting its quotation for the May 4, 1982, closing date, Precision Dynamics attached a letter in which it took exception to the specifications. On June 1, 1982, Precision Dynamics received a letter in which the agency advised it that the quotation had been rejected as nonresponsive. Its subsequent protest to our Office was filed on June 9, 1982.

Our Bid Protest Procedures, 4 C.F.R. § 21.2 (1982), require that protests alleging defects which are apparent on the face of a solicitation be filed before bid opening

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or the initial closing date for receipt of proposals. It is well settled that such a protest, filed with a bid or included in a proposal, will not be considered timely. Bell & Howell Company, B-203235.4, January 5, 1982, 82-1 CPD 10; Colorado Research and Prediction Laboratory, Inc.-- Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD 369.

Thus, Precision Dynamics' letter to DPSC, attached to its quotation, cannot be considered a timely protest to the contracting agency, and its subsequent protest to our Office also is untimely.

We note, however, that Precision Dynamics has filed an identical protest with regard to a different solicitation, also issued by DPSC. Since this second protest was received by our Office before the closing date, we have requested a report from the contracting agency and will consider the allegedly restrictive specifications in a forthcoming, separate decision.

The protest is dismissed.

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