

119054 PL-1
Wong

DECISION



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

FILE: B-208032 DATE: July 27, 1982

MATTER OF: J. F. Pitre Cleaning Corporation

DIGEST:

1. Protest against alleged improprieties in an IFB which were apparent on receipt of the solicitation is untimely where filed after bid opening.
2. Protest is summarily denied where the protester's initial submission shows that bids were properly evaluated without regard to labor surplus area status since procurement was not a labor surplus area set-aside.

J. F. Pitre Cleaning Corp. (Pitre) protests the award of a contract to supply custodial and janitorial services at Ft. Hamilton, Brooklyn, New York, under solicitation No. DABT35-82-B-0119, issued by the Department of the Army, Headquarters, Training Center, and Ft. Dix Procurement Division, Ft. Dix, New Jersey. Pitre was the fourth low bidder when bids were opened on June 14, 1982. Although Pitre acknowledges that this procurement was not set aside for labor surplus area concerns, Pitre contends that it nevertheless should have been accorded a preference in the price evaluation as an eligible concern because there were various clauses in the solicitation dealing with such preference. For reasons stated below, we dismiss in part and deny in part this protest.

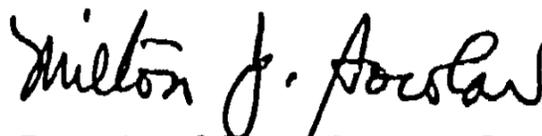
To the extent the protest is against the failure of the procurement to be set aside, our Bid Protest Procedures require that protests based on alleged improprieties in any type of solicitation which are apparent from the solicitation as issued be filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1982). The alleged impropriety protested by Pitre--the absence of a labor surplus area concern set-aside provision--was apparent in the solicitation. Pitre, in fact, acknowledges that the solicitation was not set aside

as a labor surplus area concern procurement. Since Pitre's protest was filed after bid opening, it is untimely and we will not consider the protest on its merits. Monroe Division, Litton Business Systems, B-207551.2, June 18, 1982, 82-1 CPD _____.

With regard to the contention that bids should have been evaluated on the basis of a labor surplus area set-aside, a contracting agency may not evaluate bids in a manner which is inconsistent with the evaluation scheme set forth in the solicitation. To permit otherwise would be contrary to the legal requirement that all evaluation factors be made known in advance of bid opening so that all bidders can compete on an equal basis. Northern Virginia Van Lines, Inc., B-204518, December 21, 1982, 81-2 CPD 485. Since the solicitation did not provide for a labor surplus area method of evaluation, it would not have been proper to evaluate bids on this basis.

Finally, where a protester's initial submission indicates the protest is without legal merit, we will decide the matter without obtaining a report from the agency. Alan Scott Industries, B-201743, et al., March 3, 1981, 81-1 CPD 159.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States