

DECISION



119968 Lieberman 23034
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209628

DATE: November 22, 1982

MATTER OF: North Wind Power Co.

DIGEST:

1. Protest against alleged improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.
2. GAO will not consider protest against affirmative determination of responsibility absent allegation of fraud on the part of procuring officials, or misapplication of definitive responsibility criteria contained in solicitation.

North Wind Power Co. (NWPC), protests the award to, International Energy Systems of Florida City, Florida (Interstate), of a contract for a wind powered generating system for the Biscayne National Park, under invitation for bids No. 5000-82-116, issued by the Department of the Interior. NWPC asserts that the solicitation specifications were overly restrictive and impossible to meet and that the awardee, International, is not a responsible contractor.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1982), require that protests based upon alleged improprieties in a solicitation apparent prior to bid opening must be filed prior to bid opening. Here, NWPC indicates that the alleged specification improprieties were apparent from the solicitation since NWPC argues that the stated system output requirements exceed the maximum which is possible. Thus, NWPC's protest which was not filed until after award was made is clearly untimely.

Regarding International's alleged nonresponsibility, our Office does not review protests of affirmative determinations of responsibility unless fraud on the part of procuring officials is alleged, or the solicitation contains

023970
119968

definitive responsibility criteria which allegedly have been misapplied. Gaffny Plumbing and Heating Corporation, B-206006, June 2, 1982, 82-1 CPD 521. Neither exception is applicable here.

Since this protest does not involve matters warranting our review on the merits, we dismiss the protest without obtaining a report from the contracting agency. Warfield & Sanford, Inc., B-206929, April 20, 1982, 82-1 CPD 365.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel