

DECISION

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

FILE: B-210441

DATE: February 2, 1983

MATTER OF: Facet Devices Corporation

DIGEST:

An alleged impropriety in a request for proposals not raised until after the closing date for receipt of best and final offers is untimely and will not be considered on the merits.

Facet Devices Corporation, Facet Enterprises, Inc. (FDC), protests the Department of the Army's (Army) decision to certify Garcia Ordnance Corporation (GOC) as an approved source for a procurement of carburetors under request for proposals (RFP) No. DAAJ09-82-R-B104. FDC contends that GOC does not qualify as an approved source for carburetors.

We dismiss the protest.

FDC's protest letter dated January 5, 1983, was filed (received) in our Office on January 11, 1983. The Army advises that the initial closing date was July 22, 1982, and the closing date for submission of best and final offers was January 6, 1983.

Our Bid Protest Procedures require that a protest based upon alleged improprieties in an RFP which are apparent prior to the closing date for the receipt of proposals be filed prior to the closing date. 4 C.F.R. § 21.2(b)(1) (1982). Further, where the alleged improprieties do not exist in the initial solicitation, but are subsequently incorporated therein, a protest must be filed not later than the next closing date.

While the closing date for receipt of best and final offers was January 6, 1983, the protest was not filed until January 11, 1983, although FDC was aware of the alleged impropriety contained in the solicitation--GOC's certification as an approved source--prior to the closing date. In this connection, the Army advises that on December 20, 1982, the contracting officer orally advised

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FDC that GOC was an approved source under this RFP, and that this would be confirmed by amendment to the RFP. FDC's protest contains a copy of a Freedom of Information Act (FOIA) request filed on December 20, 1982, which indicates knowledge of this information, by asking for the preaward survey pertaining to the Army's certification of GOC as an approved source. The Army further advises that an amendment listing GOC as an approved source was issued on December 21, 1982. FDC acknowledged this amendment on January 6, 1983, indicating that FDC received the amendment in a timely manner.

Under these circumstances, this protest filed after the closing date is untimely and will not be considered on the merits.

We dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel