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DECISION

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

FILE: B-211707 **DATE:** August 23, 1983

MATTER OF: Willis Baldwin Music Center

DIGEST:

1. Where conflicting statements of the protester and the contracting agency are the only evidence regarding alleged directions from agency personnel to the protester to quote a particular model, the protester has not met its burden of affirmatively proving that such directions were given.

2. GAO's Bid Protest Procedures provide that in the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date following the incorporation.

Willis Baldwin Music Center protests the award of a contract for two chapel organs to the Allen Organ Company under request for quotations (RFQ) No. N00639-83-Q-0235, a small purchase procurement, issued by the Naval Air Station, Memphis, Tennessee (Navy). Willis Baldwin contends that Navy personnel specifically directed the firm to quote its larger and more expensive model in excess of the solicitation's requirements, and that the amended requirements of the solicitation were ambiguous. We deny the protest in part and dismiss it in part.

The contracting officer issued the RFQ after discussing the minimum requirements for the two organs with both the Chaplain Department and industry representatives. Initial quotations were received from all five firms solicited. Amendment No. 0001 was issued on March 29, 1983 to clarify two of the solicitation requirements, and extended the closing date to April 13. Willis Baldwin acknowledged the amendment without changing its initial quote as to either the model offered or price. Award was subsequently made to the Allen Organ Company with a low quote of $16,750; Willis Baldwin was third low at $24,533.

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Willis Baldwin now alleges that it quoted its larger Model 635 because the Chaplain Department and the Supply Officer specifically directed it to do so. However, in its report to our Office, the Navy expressly denies that any such directions were given by any personnel connected with the procurement. What we have, therefore, are conflicting statements on the issue by the protester and the contracting agency, with no evidence to support Willis Baldwin's allegation. Consequently, the firm has not met its burden of affirmatively proving its allegation, and we deny this issue of its protest. Holley Electric Construction Co., Inc., B-209384, January 31, 1983, 83-1 CPD 103.

In addition, Willis Baldwin contends that Amendment No. 0001 to the solicitation, which changed two of the technical requirements, was ambiguous. The issue is dismissed as untimely. Our Bid Protest Procedures provide that in the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the closing date following the incorporation. 4 C.F.R. § 21.2(b)(1) (1983). Here, Amendment No. 0001 extended the closing date to April 13. As noted above, Willis Baldwin acknowledged the amendment and affirmed its original quotation in a timely manner. Willis Baldwin transmitted a telegraphic protest to our Office on May 2. As the firm did not protest until well after the extended closing date, the issue of ambiguity is clearly untimely and will not be considered. The Advantech Corporation, B-207793, January 3, 1983, 83-1 CPD 3. Accordingly, the protest is denied in part and dismissed in part.

Harry R. Van Cleve
for Comptroller General
of the United States