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DECISION

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

FILE: B-213439 **DATE:** November 8, 1983

MATTER OF: Inventive Packaging Corporation

DIGEST:

1. Protest based upon alleged improprieties on the face of the IFB is untimely since it was not filed prior to the bid opening date.

2. Oral advice by agency personnel that conflicts with specific language of the specification is not binding on the agency.

Inventive Packaging Corporation (IPC) protests the rejection of its low bid submitted to the Defense Logistics Agency (DLA) in response to invitation for bids Nos. DLA120-83-B-1275 and 0988. The solicitation sought bids for child-resistant packaging. The protest is dismissed.

The specifications stated that the required safety caps for the bottles and vials must be of the press-lug design or the line-up-the arrow orientation type but not reversible. IPC offered a package with reversible caps and its bid was rejected. IPC contends that the specifications exceed the government's minimum needs. IPC further contends that it did not protest prior to bid opening because it was told by a staff member of the Defense Medical Materiel Board, after a telephone conversation with the contracting officer, that IPC's caps "complied with the salient characteristics of the specifications."

IPC's contention that the specifications improperly restrict competition and overstate the agency's needs is clearly untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1983). These procedures require that a protest alleging improprieties apparent on the face of the IFB must be filed prior to the bid opening date. IPC's protest indicates that the bid opening date was July 14, 1983 and its protest was received by our Office after that date.

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With respect to IPC's contention that it was orally advised of the acceptability of its product, we point out that Standard Form 33-A, paragraph 3 warns all bidders that oral explanations or instructions will not be binding upon the agency. Standard Form 33-A was incorporated into the solicitation by reference and is therefore binding upon the bidders. In this connection, we have frequently held that bidders rely upon oral advice at their own risk. International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD 652. Moreover, it is our view that it was unreasonable for IPC to rely upon such oral advice when it was in direct conflict with the clear language in the specification.

The protest is dismissed.

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