

DECISION



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

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FILE: B-213318

DATE: November 10, 1983

MATTER OF: The Allen Products Company

DIGEST:

1. GAO will not review a contracting agency's affirmative determination of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.
2. Protest based upon alleged improprieties which are apparent prior to bid opening must be filed prior to bid opening.
3. Procedural deficiency that has no bearing on the validity of bids received would not affect the legality of an award.

The Allen Products Company (Allen) protests the award of a contract under invitation for bids (IFB) No. 9-BB53-39-3-111B issued by the National Aeronautics and Space Administration for motion picture processing equipment.

We dismiss the protest.

First, Allen alleges that none of its competitors that submitted bids can meet the 45-day delivery schedule in the IFB.

Whether Allen's competitors can meet the delivery schedule in the IFB is a matter of responsibility. Merchants Rent-A-Car, Inc., B-211934, June 15, 1983, 83-1 CPD 659. Our Office will not review a contracting agency's affirmative determination of responsibility absent a showing that the determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. Bid Protest Procedures, 4 C.F.R. § 21.3 (g)(4), added by 48 Fed. Reg. 1932 (1983); Merchants Rent-A-Car, Inc., supra. Neither exception applies here.

Second, Allen complains that it had difficulty obtaining the IFB and the bid results.

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The procuring activity has advised us informally on this aspect of the protest. Although, initially, an incorrect IFB was sent to Allen, subsequently, Allen did receive the correct IFB and was able to submit a timely bid. To the extent that Allen suggests some impropriety in the procuring activity furnishing the IFB, the protest is untimely, since bid opening was September 23, 1983, and Allen did not send a letter of protest until October 5, 1983. In that regard, the Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), provide that protests based upon alleged improprieties which are apparent prior to bid opening must be filed prior to bid opening. Further, as to the difficulty in obtaining the bid results, by letters dated September 27 and October 11, 1983, respectively, Allen was informed that it was not the low bidder and was furnished a copy of the bid abstract. Any delay by the procuring activity in furnishing the bid results would be a procedural deficiency that has no bearing upon the validity of the bids received and, therefore, would not affect the legality of an award. McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192.

Harry R. Van Cleve

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Acting General Counsel