

DECISION



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

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FILE: B-212829

DATE: January 20, 1984

MATTER OF: John Crane-Houdaille, Inc.

DIGEST:

1. Protest made after the closing date for the receipt of best and final offers that solicitation of best and final offers was improper is untimely.
2. Speculation that contracting agency disclosed protester's status as low offeror to competitor before soliciting best and final offerors, which is denied by contracting agency, does not meet protester's burden of proof.

John Crane-Houdaille, Inc. (JCH), protests the contract award made to CR Industries (CRI), the low offeror after best and final offers under request for proposals No. DAAE07-83-R-A306, issued by the United States Army Tank-Automotive Command, Warren, Michigan.

The first basis of protest is that the award should have been made to JCH on the basis of initial offers received instead of soliciting best and final offers. The second basis of protest is that JCH's status as low offeror was disclosed to CRI before the solicitation of best and final offers.

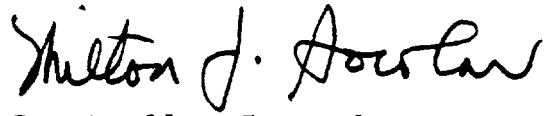
We dismiss the protest in part and deny it in part.

JCH contends that it was improper to solicit best and final offers because it was told after the receipt of initial offers that it would receive award and the subsequent change in the procurement technical data should not have prompted the issuance of the solicitation of best and final offers. Essentially, JCH contends that the solicitation of best and final offers was improper. Since JCH did not protest this before the closing date for the receipt of best and final offers, its protest on this basis is untimely. 4 C.F.R. § 21.2(b)(1) (1983).

JCH contends that the contracting agency must have disclosed its status as low offeror to CRI before soliciting best and final offers because it was CRI that suggested the

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revision of the technical data after the initial offers were received and evaluated. The contracting agency denies the disclosure. Absent any evidence of the actual disclosure to CRI of the status of JCH as low offeror before the receipt of best and final offers, we assume that JCH's allegation is speculative and we conclude that JCH has not met its burden to prove affirmatively its allegation. Energy and Resource Consultants, Inc., B-205636, September 22, 1982, 82-2 CPD 258.

for 
Comptroller General
of the United States