

DECISION

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

27261

FILE: B-213622

DATE: January 23, 1984

MATTER OF: Magnaco Industries

DIGEST:

Protest alleging that a solicitation improperly required offerors to submit representative samples of their products is untimely since the alleged impropriety was apparent prior to the closing date for receipt of initial proposals, but the protest was not filed until after that date.

Magnaco Industries protests a provision in the General Services Administration's solicitation No. FEN-ED-A3134-N-10-20-83 for wire twister pliers requiring offerors to submit "bid samples." Magnaco also protests the agency's request for cost or pricing data. We dismiss the protest as untimely.

The solicitation required each offeror to submit with its offer a representative sample of the items it proposed to supply. Offers were due by October 20, 1983. The protester did not submit such a sample with its offer, and when the agency requested that Magnaco submit a sample within 5 days, Magnaco protested to this Office on November 4. Magnaco complains that since the solicitation fully described the agency's requirements for the items being procured, the solicitation's sample requirement was improper. Magnaco also contends that the sample requirement unduly restricted competition.

Our Bid Protest Procedures provide that protests based upon alleged solicitation improprieties that are apparent prior to the closing date for receipt of initial proposals must be filed prior to that date. 4 C.F.R. § 21.2(b)(1) (1983). Since the sample requirement was apparent in the solicitation, but the protester


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did not protest until after the closing date, its protest on this issue is untimely and will not be considered. TS Infosystems, Inc., B-209900, August 3, 1983, 83-2 CPD 155.

Because the protester did not submit the requested sample, its offer as submitted was unacceptable. The protester declined again to submit a sample when the agency requested that it do so within 5 days, and the agency informs us that it therefore rejected the protester's offer. Since the protester thus is not eligible for an award, we need not consider its objections to the solicitation's cost or pricing data requirement.

We dismiss the protest.


Harry R. Van Cleve
Acting General Counsel