

DECISION

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

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FILE: B-213792**DATE:** January 25, 1984**MATTER OF:** Terry, Inc.**DIGEST:**

1. Protest against solicitation purchase description received after bid opening is untimely.
2. GAO does not consider allegations of antitrust violations.
3. Protester who is not one of the bidders allegedly rejected as nonresponsive is not an interested party to protest the rejection of those bids.

Terry, Inc. (Terry), protests under invitation for bids (IFB) No. DAAA08-83-B-0204 issued by the Department of the Army.

We dismiss the protest.

The first basis of the protest is that the purchase description is unduly restrictive. Bids were opened on September 1, 1983. Subsequent to a protest filed with the contracting activity on October 2, 1983, Terry delivered its protest to our Office on November 22, 1983. Our Bid Protest Procedures require that a protest based upon alleged improprieties in an IFB which are apparent prior to bid opening be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983); International Business Investments, Inc., B-212689.2, August 31, 1983, 83-2 CPD 284. Any objections to the purchase description were ascertainable from reading the IFB prior to bid opening. Since Terry filed its protest after bid opening, it is untimely.

Terry also alleges antitrust violations. Our Office does not consider allegations of antitrust violations, and any evidence of such violations should be submitted to the Department of Justice by the protester. Barrier Industries, Inc., B-210050, January 6, 1983, 83-1 CPD 11.

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Terry also questions whether the two low bids were properly rejected as nonresponsive. Under our Bid Protest Procedures, a party must be "interested" before we will consider its protest on the merits. 4 C.F.R. § 21.1(a) (1983). In determining whether a party is sufficiently interested, we will examine the degree to which the asserted interest is both established and direct. As a general rule, we will not consider a party's interest to be sufficient where that party would not be eligible for award even if the issues raised were resolved in its favor. See Amacor Industries, Inc., B-210951, April 4, 1983, 83-1 CPD 351; Anderson Hickey Company, B-210252, March 8, 1983, 83-1 CPD 235. Here, there were three responsive bidders. Further, the two low bidders whose bids were rejected as nonresponsive have the primary interest in the responsiveness of their bids. Neither of the two bidders is Terry. Therefore, Terry is not an interested party on this issue.

Harry R. Van Cleve
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Acting General Counsel