

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

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FILE: B-213486.2**DATE:** March 2, 1984**MATTER OF:** Kogen Industries, Inc.**DIGEST:**

A protest based on alleged improprieties on the face of a solicitation is untimely and will not be considered on the merits where not filed with GAO or the contracting agency prior to bid opening.

Kogen Industries, Inc. protests the award of a contract to D&S Manufacturing Company under invitation for bids (IFB) No. DAAE07-83-B-H632, issued by the Department of the Army for 618 trailer chassis. Kogen was the initial apparent low bidder, but was displaced by D&S after the Army added an \$87,000 first article test cost estimate to Kogen's bid for evaluation purposes. Kogen contends that the test estimate was "grossly overstated," and also seems to argue that a first article test should not even have been required according to applicable regulations. We dismiss the protest as untimely.

Our Bid Protest Procedures provide that protests based on alleged solicitation deficiencies which were or should have been apparent prior to bid opening, must be filed with either our Office or the contracting agency prior to bid opening. 4 C.F.R. 21.2(b)(1) (1983). Here, the IFB clearly stated that the government's cost estimate for the first article test was \$87,000, and that absent a waiver, this amount would be added to the bids for evaluation purposes. Thus, if Kogen believed the test requirement was improper or that the \$87,000 estimate was too high, it was required to protest on these grounds prior to the September 2, 1983 bid opening. Since its protest was not received in our Office until October 20, the protest is untimely and will not be considered on the merits. See Pluribus Products, Inc., B-212096, June 24, 1983, 83-2 CPD 19.

Kogen believes it is unreasonable to require that protests such as this be filed before bid opening, when it

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is not yet clear that the alleged deficiency will affect the award. We do not agree. The timeliness rule applied here is designed to permit our Office (or the contracting agency) to consider the allegations while corrective action, if warranted, is most practicable and, thus, least burdensome on the conduct of the procurement. Schwarze Industries, Inc., B-209512, November 2, 1982, 82-2 CPD 404. For us to consider at this late date a protest by a willing participant in the competition of an alleged impropriety evident at the procurement's inception would render meaningless the purpose of our timeliness rules. Federal Data Corporation, B-211357, September 7, 1983, 83-2 CPD 309.

In view of our conclusion that this protest is untimely, we see no reason to hold a conference Kogen has requested to discuss unspecified "other improprieties" regarding this procurement.

The protest is dismissed.

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