

DECISION



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

FILE: R-214952

DATE: June 5, 1984

MATTER OF: Sewer Rodding Equipment Company

DIGEST:

1. Protest of alleged deficiencies in a Department of Energy operating contractor's solicitation is untimely where filed after the closing date for receipt of proposals.
2. Whether a bidder is reputable concerns the firm's responsibility, and GAO will not review a determination that a firm is responsible except in limited circumstances.
3. GAO does not consider allegations of possible patent infringements.

Sewer Rodding Equipment Company protests the award of a contract to Sewer Equipment of America (SEA) for a sewer cleaning machine under solicitation No. 216-PM-84 issued by the Department of Energy's (DOE) operating contractor, Reynolds Electrical & Engineering Co., Inc., for the Nevada Test Site. Sewer Rodding alleges that the solicitation contained inadequate or ambiguous specifications. The protester also alleges that SEA is not a reputable firm and the sewer cleaning machine it is offering is covered by a patent and that the patent holder has not licensed SEA to sell it. We dismiss the protest.

The protester's allegation that the specifications were inadequate or ambiguous was untimely filed. Under our Bid Protest Procedures, a protest of a solicitation deficiency which is apparent from the solicitation must be filed, either with the contracting agency or our Office, prior to bid opening or the closing date for receipt of proposals. 4 C.F.R. § 21.2 (1984). Since Reynolds was acting "for" DOE, it is considered to be the "contracting agency" for purposes of this procurement and the timeliness provisions of our procedures. See Amray, Inc., B-208893, Jan. 10, 1983, 83-1 CPD ¶ 22.

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In this case, the solicitation specified a date of March 19, 1984 for receipt of proposals. Sewer Rodding did not protest the specification either to Reynolds or our Office until after that date. Therefore, its protest with regard to the specifications is untimely.

The protester's allegation that SEA is not a reputable firm constitutes a challenge to an affirmative determination of SEA's responsibility, which our Office will not review in the absence of a showing of possible fraud or bad faith or a failure to apply definitive responsibility criteria. AAA Engineering and Drafting, Inc., B-213108, Oct. 11, 1983, 83-2 CPD ¶ 442. The protester has not suggested that either exception applies here. Concerning Sewer Rodding's remaining basis for protest, our Office does not consider allegations of possible patent infringements. VSI Corporation, Aerospace Group, B-211024, April 4, 1983, 83-1 CPD ¶ 352.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel