

**DECISION**

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

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**FILE:** B-217028**DATE:** January 22, 1985**MATTER OF:** R. P. Sita, Inc.**DIGEST:**

1. Award of a formally advertised contract must be based on lowest total price if the bid is responsive and the bidder is responsible. Statement in IFB that the contract will not necessarily be awarded to the lowest bidder merely informs bidders that responsiveness and responsibility are additional factors to be considered before award will be made.
2. Protest filed after award, alleging that procurement should have been negotiated rather than formally advertised, is untimely since the alleged solicitation impropriety was apparent prior to bid opening date.

R. P. Sita, Inc. (Sita), protests the award of a contract to EESCO Pump and Valve Co. (EESCO), Baltimore, Maryland, under invitation for bids (IFB) No. DTF15-85-B-10004, issued by the Federal Aviation Administration. The contract is for the performance of mechanical repairs to various types of equipment at Washington National Airport, Washington, D.C. Bids were evaluated on the basis of hourly wage rates proposed multiplied by the IFB's stated estimate of the number of hours required for each labor category, and award was made on the basis of the lowest total bid price.

Sita, the second lowest bidder, protests that, although the IFB (part IV, section "L," paragraph L.1) states that "The fact that a bidder submits the lowest bid does not automatically mean that he will be awarded the contract," the contract was awarded to EESCO on the assumption that the bid offering the lowest hourly wages would be in the best financial interest of the government. Sita argues that it should have been awarded the contract because it could complete the required work in the most cost-efficient manner, even though its hourly wages were higher than those of the lowest bidder.

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Because the procurement was conducted under formal advertising procedures, evaluation of bids based on a combination of cost and technical factors, as the protester suggests, would be inappropriate. The award of a formally advertised contract must be based on the most favorable cost to the government, assuming the low bid is responsive and the bidder responsible. See Institute for Aerobics Research, 62 Comp. Gen. 458 (1983), 83-1 C.P.D. ¶ 635; Emerson Electric Company, Environmental Products Division, B-209272, Nov. 4, 1982, 82-2 C.P.D. ¶ 409. The evaluation procedure suggested by Sita is appropriate only in a negotiated solicitation. The solicitation clause to which the protester refers, when read in its entirety, clearly informs bidders that responsiveness and responsibility are factors to be considered in addition to cost before an award will be made. Therefore, we deny the protest on this point.

To the extent that the protester contends that a negotiated solicitation should have been used and cost effectiveness considered in view of the nature of this procurement, the protest is untimely because a protest based upon an alleged impropriety in a solicitation that is apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984); AT&T Information Systems, Inc., B-216438, Sept. 24, 1984, 84-2 C.P.D. ¶ 347. The fact that the procurement was formally advertised was evident when Sita received the IFB, but Sita did not file its protest in our Office until after bid opening. Therefore, Sita's protest of the solicitation procedure is untimely and will not be considered further.

The protest is denied in part and dismissed in part.

  
for Comptroller General  
of the United States