

DECISION

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

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FILE: B-216722**DATE:** January 28, 1985**MATTER OF:** Philips Business Systems, Incorporated**DIGEST:**

1. Where protester concedes the product offered by its dealer did not meet specific solicitation requirements, agency properly found dealer's bid nonresponsive.
2. Protest against specification requirements, filed after bid opening, is dismissed as untimely.
4 C.F.R. § 21.2(b)(1).

Philips Business Systems, Incorporated (Philips), protests the Veterans Administration's (VA) award of a contract for a central dictation system to Dictaphone Corporation (Dictaphone) under invitation for bids (IFB) No. 640-93-84 issued by the VA Medical Center, Palo Alto, California. Philips sells Norelco products and U.S. Audio is a dealer offering Norelco products. Philips asserts that only Dictaphone can meet the specification requirement that offered equipment be on the Federal Supply Schedule.

We dismiss the protest in part and deny it in part in accordance with § 21.3(g) (1984) of our Bid Protest Procedures, which provides for dismissal without further development where information provided by the agency justifies this action.

The IFB was issued in early August 1984 and required that equipment offered, including six transcribers, be on the Federal Supply Schedule. Bid opening was on September 12, 1984. At bid opening, U.S. Audio, bidding Philips' Norelco products, was the low bidder, while Dictaphone was third low. VA rejected both the low and the second low bids as nonresponsive to the IFB. U.S. Audio was rejected for failure to include items (transcribers) specifically called for in the specifications. Although Philips has offered explanations for U.S. Audio's failure to bid the required items, it is clear that the items were called for by the IFB. For example, the IFB required transcribers. Philips concedes that its transcribers are not available

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under the Federal Supply Schedule and cannot be procured without a waiver from the General Services Administration. Philips clearly was aware of these alleged specification improprieties before the IFB bid opening.

Philips concedes that its bid did not meet the IFB specifications and, in our view, properly was determined nonresponsive. This aspect of the protest is denied.

To the extent Philips is contending that the specifications do not reflect the agency minimum needs and that the IFB requirements should have been relaxed to permit Philips to bid its product, Philips' protest is essentially against solicitation improprieties apparent from the solicitation. Our Bid Protest Procedures require that a protest based upon an alleged impropriety in an IFB be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). Moreover, a bidder who participates in a procurement through the point of bid opening without objection must be deemed to have accepted the terms and conditions of the IFB. Jordan Panel System, Corp., B-209469, Dec. 8, 1982, 82-2 C.P.D. ¶ 523. Since bid opening was September 12, 1984, and Philips did not object to the specifications until its October 9, 1984, protest to GAO, its protest is clearly untimely and will not be considered.

for Milton J. Aoustan
Comptroller General
of the United States