

31855

DECISION



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

FILE: B-218678

DATE: August 1, 1985

MATTER OF: Rogers Helicopters, Inc.

DIGEST:

1. Protest based on alleged solicitation impropriety which was apparent prior to bid opening is untimely when filed with the procuring agency after bid opening.
2. Allegation that contracting officer's representation led protester to believe that it should not file protest until after bid opening does not relieve protester of necessity to comply with GAO timeliness requirements. GAO Bid Protest Regulations provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a contracting officer.

Rogers Helicopters, Inc. (Rogers), protests the United States Department of Agriculture, Forest Service (Forest Service), award of contracts under invitation for bids (IFB) No. R5-85-05 for helicopter services to firms bidding on the basis of using Sikorsky model S55T helicopters. Rogers contends that these bids are nonresponsive to the solicitation requirement that bidders provide a "standard, factory equipped helicopter."

We dismiss the protest as untimely.

The solicitation was issued on March 6, 1985, with a bid opening date of April 5. Rogers filed its protest with the Forest Service after bid opening. Rogers contends that since the S55T consists of a Sikorsky-manufactured helicopter which is modified by Aviation Specialties International (a "modifier," not a "manufacturer") by conversion of a piston-powered helicopter to a turbine-powered helicopter, any bid specifying this helicopter is nonresponsive.

The Forest Service states that it has issued solicitations for the same helicopter services with similar or identical language for over 10 years and has awarded contracts to bidders offering S55T's over this entire period. The Forest Service also points out that since Rogers obtained a letter from Sikorsky dated March 18, 1985, prior to bid opening, stating that it did not manufacture an S55T model, the protest is untimely.

Upon reviewing the solicitation, we find that it must be read as explicitly indicating that the S55T was an acceptable aircraft. The specifications include attachment J-5, entitled "Helicopter Fixed Flight Rate and Fuel Consumption Table." This table lists a number of specified helicopter models and an hourly fuel consumption rate and an hourly flight rate for each. The Sikorsky model S55T is among the helicopters listed on this table. The IFB price schedules require an entry for estimated flight hours at the "specified hourly flight rate." This rate is the hourly flight rate listed on attachment J-5 for the model helicopter listed by the bidder. In our view, by listing specific helicopter models and their hourly flight rates for inclusion in the IFB price schedule, the solicitation has made it clear that all the helicopter models listed on the table are acceptable under the solicitation.

Accordingly, Rogers' protest is actually one against an apparent solicitation impropriety, that is, the listing of the S55T as an acceptable aircraft. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), such an alleged impropriety must be protested prior to bid opening. Rogers did not file its initial protest with the Forest Service until after bid opening and, therefore, its initial protest to the agency was untimely. Consequently, we will not consider the protest. Summit Air Conditioning and Heating, Inc., B-215537, Feb. 1, 1985, 85-1 C.P.D. ¶ 123.

Even if Rogers were correct in its interpretation that the solicitation phrase "standard, factory equipped helicopter" is inconsistent with the use of a modified helicopter such as the S55T, at most, the solicitation contained an ambiguity which resulted in an impropriety apparent on the face of the solicitation and the protest had to be filed prior to bid opening. Siemens-Allis, Inc., B-218054, Feb. 8, 1985, 85-1 C.P.D. ¶ 169; BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44.

Finally, while Rogers contends that it was advised by the contracting officer that the appropriate time to file a protest was after bid opening, our Bid Protest Regulations

provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a contracting officer. Glatzer Industries Corp.--Reconsideration, B-209440.2, Mar. 1, 1983, 83-1 C.P.D. ¶ 211.

We dismiss the protest as untimely.



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