

DECISION



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

FILE: B-219371 **DATE:** August 16, 1985
MATTER OF: Advance Technology Engineering, Inc.

DIGEST:

1. Protester has failed to meet burden of proof, and protest is denied, where protester has not furnished any evidence refuting report of contracting agency.
2. Protest is dismissed as untimely when it challenges alleged impropriety in invitation for bids which was apparent prior to bid opening, but protest was not filed until subsequent to bid opening.

Advance Technology Engineering, Inc. (Ad Tech), protests the award of a contract to Gateway Cable Company (Gateway) for 5,178 cable assemblies (used to start vehicles) under invitation for bids (IFB) No. DAAE07-85-B-J514 issued by United States Army Tank-Automotive Command, Warren, Michigan (Army).

At bid opening, Ad Tech was abstracted as the lowest bidder (\$435,832.26) and Gateway as the second lowest (\$445,825.80). Following evaluation of the bids, the bidders' respective standings were reversed with Gateway low (\$450,147.96) and Ad Tech second low (\$450,562.68). Ad Tech contends that the evaluation was improper in four respects.

The protest is denied in part and dismissed in part.

Ad Tech contends that the Army improperly failed to add a \$2 per unit, contractor reimbursable, loading charge to Gateway's bid. The Army admits that the charge was not added, but explains that the IFB only required the addition of the loading charge where the Army elected rail or water transportation as the means of shipment. Since the Army has selected motor freight, the Army views the charge as not applicable to the evaluation of Gateway's bid.

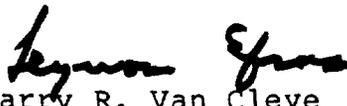
Ad Tech further contends that Gateway's bid was improperly reduced by the amount of Gateway's bid price for

First Article Testing (FAT). However, Ad Tech acknowledges the propriety of the deduction where the Army has waived FAT. The Army reports that FAT was waived as to Gateway and, as a consequence, Gateway's bid price was reduced accordingly.

Ad Tech questions the \$2,900 difference in transportation costs between the evaluated bids of Ad Tech and Gateway. The Army report provides a complete transportation cost evaluation, based on freight rates from the Eastern Area Military Traffic Command in accordance with Army Regulation 55-355, justifying the \$2,900 difference. Ad Tech has not questioned any aspect of the Army's transportation cost evaluation.

Ad Tech has not furnished any evidence refuting the Army's report, with respect to these first three contentions. Therefore, Ad Tech has failed to meet its burden of affirmatively proving its allegations and its protest of these issues is denied. Willis Baldwin Music Center, B-211707, Aug. 23, 1983, 83-2 C.P.D. ¶ 240.

Finally, Ad Tech contends that the IFB is defective because it fails to advise bidders of the assumptions (such as: full load, less than full load or consolidation of lots under the same or different contracts) which would be used in evaluating the transportation factors. We dismiss this allegation. Our Bid Protest Regulations provide that protests of alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985); IBI Security Service, Inc., B-217446, Jun. 27, 1985, 85-1 C.P.D. ¶ 732. Bids were opened on April 18, 1985, but Ad Tech's protest was not received until June 10, 1985. Therefore, the issue is untimely raised and will not be considered on the merits.

for 
Harry R. Van Cleve
General Counsel