

DECISION

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

FILE: B-220060.2

DATE: October 8, 1985

MATTER OF: Ratcliffe Corporation--Request for
Reconsideration

DIGEST:

Protest based on alleged solicitation improprieties apparent prior to the closing date for receipt of initial proposals must be filed before that date.

Ratcliffe Corporation (Ratcliffe) requests reconsideration of our September 12, 1985, dismissal of its protest, where we found Ratcliffe untimely for failure to protest an alleged solicitation impropriety prior to the closing date for receipt of initial proposals. Ratcliffe claims it was misled by the contracting officer into believing that a protest before the closing date was unnecessary because the solicitation requirement might be relaxed during negotiations. We affirm our dismissal.

Initial proposals in response to solicitation No. 10PN-NBD-5770, issued by the General Services Administration (GSA) for the procurement of an all-terrain track vehicle to be used by the Western Area Power Administration at Fort Peck, Montana, were due by July 23. Ratcliffe first protested on September 11, complaining that section C(7) of the solicitation, which set forth clutch, transmission and speed requirements for the vehicle, was too restrictive because it excluded a vehicle utilizing a hydrostatic transmission drive system.

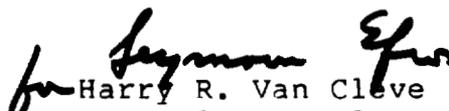
We dismissed the protest because our Bid Protest Regulations require that a protest based upon alleged solicitation improprieties apparent prior to the closing date for receipt of initial proposals be filed before that date. 4 C.F.R. § 21.2(a)(1) (1985). The purpose of this time limitation is to enable the contracting agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. For instance, if Ratcliffe had protested the allegedly restrictive requirement to GSA or our Office before the

033412

closing date, then the matter could have been reviewed early in the procurement process. If the protest were found to have merit, the solicitation could have been amended and all potential offerors thus put on notice of the agency's actual requirement before deciding whether to compete, and the best approach to take in preparing their proposals. See System Development Corporation and International Business Machines, B-204672, Mar. 9, 1982, 82-1 C.P.D. ¶ 218.

Ratcliffe's present allegation that it was misled by the contracting officer with respect to the time to protest does not excuse the untimeliness of the complaint. Our Regulations have been published in the Federal Register, and protesters therefore are charged with constructive knowledge of our filing rules. Shannon County Gas--Reconsideration, B-218232.2, Apr. 2, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 384. Moreover, Ratcliffe's allegation is based only on the firm's admitted inference from a conversation with the contracting officer that he would revise the specifications to include Ratcliffe's equipment if the firm's offered price was, in the protester's words, "competitively low." Ratcliffe also admits that when it contacted the requiring field office, which the contracting officer told Ratcliffe was "inflexible" on the issue, the office representative "was not open to discussion regarding this matter." In these circumstances, it was incumbent on Ratcliffe to protest before the competition began, and we see no reason to waive our timeliness rules.

Our dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel