

DECISION

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

FILE: B-220733

DATE: October 29, 1985

MATTER OF: Equipto Electronics Corporation

DIGEST:

1. Protester's contention that it was not aware that award could be made on the basis of other than the listed brand name product where the solicitation did not contain a listing of salient characteristics is not reasonable in light of solicitation provisions indicating that bidders could offer a brand name product "or equal."
2. Solicitation package was clearly defective where it permitted the submission of brand name or equal products but contained no listing of the salient characteristics equal products must meet. Under GAO Bid Protest Regulations, protests based on such patent solicitation improprieties must be filed prior to bid opening.
3. The award of a contract is not improper solely because a bidder did not receive a complete copy of the solicitation so long as there is adequate competition resulting in reasonable prices and there has been no showing of a conscious or deliberate intent on the part of the procuring agency to preclude a certain bidder from competing.

Equipto Electronics Corporation protests the award of a contract to California Chassis, Inc., under invitation for bids (IFB) No. DAAD05-85-B-0789, for various Equipto model steel cabinets and related items, "or equal." Equipto offered its brand name products listed in the solicitation. After the award was made to another lower bidder, Equipto protested to the Army and to this Office contending that its copy of the IFB was missing section C, which allegedly contained the salient characteristics to be met by products offered as "equal." For this reason,

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Equipto contends that it was not aware until after the award that other than its listed brand name products were acceptable. We dismiss the protest.

While a brand name or equal solicitation should include a listing of salient characteristics that must be met by products other than the listed brand name product, Department of Defense Federal Acquisition Regulation Supplement (DFARS), 48 C.F.R. § 210.004(b)(3)(i)(A) (1985); 41 Comp. Gen. 242 (1961), we do not think that Equipto's contention that it was not aware until after the award that bidders could offer other than Equipto products is reasonable. The IFB schedule, under each line item, clearly indicated that bidders could offer the Equipto product "or equal." Further, paragraph L.305 of the IFB incorporated by reference DFARS § 252.210-7000 (APR 1973), "Brand Name or Equal" which also states that bidders could offer equal products. It was thus clear from the solicitation that bidders could offer equal products.

It should have been equally clear to the protester that the solicitation package it received was defective as it permitted the submission of bids offering equal products but contained no listing of the characteristics those products must meet. To the extent Equipto is now protesting that the solicitation is defective because it lacked the section containing these salient characteristics, the protest is untimely. Under our Bid Protest Regulations, protests based on such patent solicitation improprieties must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985); Pacific Consultants, Inc., B-198706, Aug. 18, 1980, 80-2 CPD ¶ 129. Since Equipto did not protest until after award, the protest is untimely and will not be considered.

In any event, the award of a contract is not improper solely because a bidder did not receive a complete copy of the solicitation, so long as there is adequate competition resulting in reasonable prices and there has been no deliberate or conscious intent on the part of the procuring agency to preclude a certain bidder from competing. John C. Grimberg Co., Inc., B-218231, Mar. 12, 1985, 85-1 CPD ¶ 305. Equipto does not allege that there was any deliberate effort to exclude it from bidding, and it does not question the reasonableness of the contract price.

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel