

Has Further

DECISION



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

FILE: B-219512 **DATE:** November 1, 1985
MATTER OF: Coast Canvas Products II Co., Inc.

DIGEST:

1. Failure to extend bid opening date was not improper where protester was given adequate time to submit competitive bid and where adequate competition and reasonable prices were obtained and protester does not allege that any contracting agency action was deliberately intended to preclude protester from competing on procurement.
2. When protest is initially filed with the contracting agency before bid opening, bid opening in the face of protester's objections constitutes initial adverse agency action, and protest to GAO must be filed within 10 working days thereafter.
3. GAO will consider only protests involving specific procurement action and will dismiss allegations of past improprieties.

Coast Canvas Products II Co., Inc. (CCP), protests any award under invitation for bids (IFB) No. DLA100-85-B-0732 issued by the Defense Personnel Support Center (DPSC) for extendable modular tents. The IFB was issued on June 14 with an amended bid opening date of July 30, 1985, but CCP did not receive a copy of the bid package until July 1. CCP requested that the bid opening date be extended so that CCP would have the same amount of time to submit a bid as that afforded others. CCP argues that additional time is necessary because this procurement represents the initial production quantity purchase and because the specifications are very complex. CCP contends that it had to make numerous requests to the Army before it was sent a bid package and complains that it has had similar difficulties in the past.

We deny the protest in part and dismiss it in part.

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DPSC states that CCP was on the mailing list for the IFB and was sent a copy. Although CCP did not receive the first copy sent, DPSC notes that a copy of the IFB was actually received by CCP on July 1 due to its subsequent request. Amendment No. 2 extended the bid opening date from July 16 to July 30 and DPSC argues that CCP had sufficient time to submit a competitive bid despite its late receipt of the IFB.

In addition, DPSC asserts that the procurement was properly conducted and that adequate competition and reasonable prices were obtained. DPSC states that copies of the IFB were mailed/delivered to a sufficient number of potential bidders, that the procurement was also synopsisized and published for public dissemination, as required, and that ten bids were received. Finally, DPSC argues that no evidence has been presented by CCP which shows that its failure to receive the IFB when it was first mailed resulted from any deliberate or conscious effort to exclude CCP from competing on the procurement.

Under section 14.202-1 of the Federal Acquisition Regulation, Federal Acquisition Circular 84-5, April 1, 1985, contracting agencies are to allow a reasonable period of time for prospective bidders to prepare and submit their bids. A bidding time (the time between the issuance of the solicitation and the opening of bids) of at least 30 calendar days shall be provided and we note that in this case, the IFB was issued on June 14 and bid opening was not held until July 30. Although CCP did not receive its copy until July 1, CCP still had approximately 30 calendar days to prepare its bid. Thirty calendar days is all that is required to be provided by law to prospective bidders and despite CCP's assertions that the specifications involved are very complex, we are unable to conclude that this period of time was not sufficient to allow CCP to prepare a bid. See, 41 U.S.C. § 416 as added by section 2732 of the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175, 1195-6.

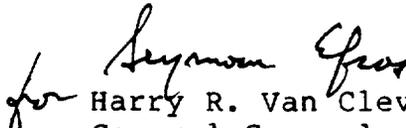
Furthermore, the propriety of a particular procurement generally does not depend on whether some prospective bidders, in fact, fail to receive bid materials in sufficient time to consider them in preparing their bids, but rather it depends on whether the government obtained adequate competition and reasonable prices. Swintec Corp., et al., B-212395, .2 et al., Apr. 24, 1984, 84-1 CPD ¶ 466. In the absence of substantive proof that an agency deliberately attempted to exclude a potential offeror, the offeror bears the risk of nonreceipt of a solicitation. Capital Engineering & Mfg., Co., B-213924, Apr. 2, 1984, 84-1 CPD ¶ 374. Here, there is no evidence

that the contracting agency deliberately attempted to preclude CCP from competing, and where adequate competition and reasonable prices were obtained, we find no basis for objecting to the award.

To the extent CCP is also protesting the IFB specifications, we find this aspect of the protest untimely. By letter of July 19, 1985 to the DPSC, CCP did allege that there were discrepancies in the specification requirements. That letter was never submitted to our Office, but it was enclosed with comments on the agency report. That protest was in effect answered when the agency opened bids in the face of CCP's objections. Our Bid Protest Regulations require that if a protest is filed with the contracting agency any subsequent protest to our Office must be filed within 10 days after the protester knows of initial adverse action on the protest filed with the agency. 4 C.F.R. § 21.2(a)(3) (1985). Since the bid opening constituted that adverse action and since CCP did not protest the allegedly inadequate specifications within 10 days after that date, this basis for protest is untimely. Lowe Brothers Electric Co., B-217583, Jan. 29, 1985, 85-1 CPD ¶ 119.

Finally, we will not consider CCP's allegations regarding its difficulties in past procurements in obtaining solicitation copies. Under our Bid Protest Regulations, 4 C.F.R. Part 21, we deal only with specific procurement actions, i.e., whether an award or proposed award of a contract complies with statutory, regulatory, and other legal requirements. Coast Canvas Products II Co., Inc., B-214272, July 23, 1984, 84-2 CPD ¶ 84. In addition, all protests must be filed within 10 working days after the basis for them is known or should have been known. Since the past events complained of all occurred more than 10 days before CCP's protest was filed with our Office, they will not be considered.

The protest is denied in part and dismissed in part.


for Harry R. Van Cleve
General Counsel