

# DECISION



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

FILE: B-221286

DATE: March 12, 1986

MATTER OF: Repco, Inc.

## DIGEST:

1. Protest concerning alleged impropriety apparent on the face of the solicitation filed after bid opening is untimely since GAO Bid Protest Regulations require that protest be filed before bid opening. Exception permitting the filing of such a protest after bid opening where a protester receives the amendment too late to protest does not apply since the record indicates there was sufficient time for a protest to have been filed.
2. Bid which takes exception to the IFB delivery schedule by allowing 112 rather than 90 days for delivery after receipt of order is nonresponsive because the bid is not an unequivocal offer to meet the material requirements set out in the solicitation.

Repco, Inc., protests the rejection of its bid under solicitation No. F39601-85-B-A023 issued by Ellsworth Air Force Base, South Dakota. The solicitation sought bids for 170 portable early warning personal alarm kits on a brand name or equal basis. Repco's bid was rejected as nonresponsive because the equal item it offered did not conform to the salient characteristics of the brand name product. In addition, Repco took exception to the required delivery schedule.

The protest is denied in part and dismissed in part.

The original solicitation, which was issued on October 16, 1985, described the equipment sought as follows:

034794

"Portable Early Warning Personal Alarm Kit,  
to include the following [products  
manufactured by Audio Intelligence Devices]:

One - Model TX - 2113 Transmitter  
One - Model RX - 821B Pocket Receiver  
One - Amplified Speaker  
One - Free space whip antenna audio  
intelligence devices #92410 or equal.

Note: High band VHF operation 136 to 150  
MHz."

The solicitation required delivery within 90 days after  
the date of a delivery order.

By letter dated October 30, Repco requested detailed  
operational specifications for the equipment and asked that  
the bid opening date be extended. On November 6, the Air  
Force issued an amendment setting forth the salient charac-  
teristics of the personal alarm kits, but not changing the  
bid opening date. The amendment required, among other  
things, that the transmitter contain an internal antenna  
and that the receiver operate in a frequency range of 136  
to 174 MHz. Repco did not receive this amendment until  
November 13.

Five bids were received and opened on November 19.  
Repco and Audio Intelligence Devices submitted the fourth  
and fifth low bids, respectively. The Air Force determined  
that the only alarm kits which met the salient character-  
istics were those offered by Audio Intelligence and advised  
Repco of this determination on November 25. Repco pro-  
tested this determination to the Air Force on November 25  
and filed a protest with our Office on November 29.

Repco contends that the requirement that the  
transmitter contain an internal antenna was unduly restric-  
tive of competition and complains that the amendment was  
issued too late. Repco also claims that its bid was  
improperly rejected.

Repco's protest against the internal antenna  
requirement is untimely. Repco received the amendment 5  
calendar days (3 working days) prior to the scheduled bid

opening date.<sup>1/</sup> To be timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), a protest based on an alleged impropriety apparent on the face of a solicitation must be filed prior to bid opening so that corrective action, if appropriate, may be taken before bids are opened and competitors' prices exposed. R&B Equipment Co., B-219560.2, Sept. 5, 1985, 85-2 CPD ¶ 272. There is an exception to the general rule where the protester belatedly receives an amendment which creates the alleged defect and could not reasonably be expected to file a protest before bids are opened. Cosmos Engineering, Inc., B-217430, Jan. 18, 1985, 85-1 CPD ¶ 62.

In this instance, Repco submitted its bid on November 15. The bid acknowledges receipt of the amendment, which was presumably taken into account in its preparation. Since, under the circumstances, it would appear that Repco had an adequate opportunity to protest the internal antenna requirement before bid opening, we do not invoke the exception and dismiss this portion of its protest. See R&B Equipment Co., B-219560.2, supra.

Repco complains that its bid was improperly rejected. The Air Force points out that it rejected Repco's bid because it failed to include descriptive literature showing an internal antenna and because it failed to meet the solicitation delivery schedule.

The protester does not argue that its descriptive literature showed the required antenna. Further, although the solicitation required delivery of all orders within 90 days of the date the order was placed, Repco's bid specifies that delivery of the initial order will be 112 days after receipt of the order.

To be responsive, a bid must contain an unequivocal offer to perform in compliance with all material terms including the delivery schedule of a solicitation.

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<sup>1/</sup> Bid opening was originally scheduled for November 18, but was postponed until the 19th because the base was closed due to bad weather. As a result, Repco actually had 6 days before bid opening--from the 13th to the 19th.

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ASEA Electric, Inc.--Reconsideration, B-218129.2, May 17, 1985, 85-1 CPD ¶ 565. Since Repco's bid did not comply with the solicitation's requirements regarding both the antenna and delivery, we conclude that the Air Force properly rejected Repco's bid as nonresponsive.

The protest is dismissed in part and denied in part.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel