

**DECISION**

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

**FILE:** B-222810 **DATE:** July 2, 1986  
**MATTER OF:** Titmus Optical, Inc.

**DIGEST:**

1. Protest that solicitation specifications are restrictive and obsolete is untimely and not for consideration when it is filed after bid opening.
2. An oral complaint to the contracting officer prior to bid opening does not constitute a timely agency protest because oral protests are no longer permitted under the Federal Acquisition Regulation.
3. A telegraphic bid submitted in response to a solicitation which did not authorize telegraphic bids is properly rejected.

Titmus Optical, Inc. (Titmus), protests the rejection of its low bid under invitation for bids (IFB) No. DLA120-86-B-0646 issued by the Defense Logistics Agency (DLA). In the alternative, Titmus asserts that the IFB's specifications in the solicitation for vision testing devices are restrictive and obsolete. Titmus thus contends the IFB should be canceled and an IFB containing revised specifications should be issued.

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

The IFB, issued on February 24, 1986, by the Defense Personnel Support Center (DPSC), requested bids for a total quantity of 218 vision testing devices. On March 26, 1986, approximately 3 hours before bid opening, Titmus spoke with the contracting officer and requested that bid opening be extended so that the specifications could be revised which would enable Titmus to bid on the solicitation. The contracting officer responded that she could not extend the bid opening based on the protester's bare allegation that the specifications needed to be revised. She told Titmus that it should have notified her of its position, in detail, within a reasonable period before bid opening in order for

035887

her to properly evaluate its request for an extension of bid opening. In addition, the contracting officer advised that telegraphic bids were unauthorized under the IFB. Two responsive bids were received at bid opening on March 26, 1986. Titmus' telegraphic bid was rejected. We received Titmus' protest concerning this solicitation on April 11, 1986.

Initially, Titmus' allegation that the specifications are restrictive and obsolete concerns alleged improprieties apparent from the solicitation. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require that protests such as this, based on alleged improprieties apparent in a solicitation, be filed prior to bid opening. K-II Construction, Inc., B-221661, Mar. 18, 1986, 65 Comp. Gen. \_\_\_\_\_, 86-1 C.P.D. ¶ 270. Titmus' protest was not filed with our Office until after the March 26 bid opening and therefore is untimely.

Moreover, although Titmus orally questioned the contracting officer prior to bid opening with regard to the solicitation specifications, it never submitted a written protest to DLA prior to the bid opening date. The company's oral complaint to the contracting officer prior to bid opening did not constitute a timely agency protest such that a subsequent protest to our Office would be timely because oral protests are no longer provided for under the Federal Acquisition Regulation (FAR). FAR, § 33.101 (Federal Acquisition Circular No. 84-6, Jan. 15, 1985); Anthony R. Teel, B-219052, Oct. 4, 1985, 85-2 C.P.D. ¶ 379.

Titmus also argues that the telegraphic bid which it submitted prior to bid opening, and which it followed up after bid opening with a written bid, should not have been rejected for "arbitrary and technical" reasons. In our view, DLA properly rejected the telegraphic bid. As a general rule, telegraphic bids may not be considered by a procuring agency unless they are explicitly authorized by the solicitation. Marbex, Inc., B-221995, Feb. 28, 1986, 86-1 C.P.D. ¶ 212. Here, the solicitation at paragraph LI1 entitled "Solicitation Provisions Incorporated by Reference" (FAR, § 52.252-1), included a box for incorporating FAR, § 52.214-13, which could have been checked to authorize telegraphic bids. However, the box was not checked, making it clear that the clause permitting submission of telegraphic bids was not incorporated into the solicitation. Furthermore, the solicitation language immediately preceding

§ 52.251-1 provides that the individual provisions are applicable only when marked. Thus, it is clear that the clause authorizing telegraphic bids was not incorporated into the solicitation, nor was it intended to be incorporated. Since telegraphic bids were not authorized, DLA properly rejected Titmus' telegraphic bid. Marbex, Inc., B-221995, supra.

In addition, Titmus states that if its bid were accepted, it would result in a cost savings to the government. Essentially, Titmus argues that the cost savings to the government should provide justification for considering an unacceptable bid. Although rejection of Titmus' bid may result in additional cost to the government on this procurement, we have held that the maintenance of the integrity of the competitive system by rejection of an unacceptable bid is more in the government's interest than the pecuniary advantage to be gained in a particular case. Survivair, Division of U.S.D. Corp., B-215214, Dec. 3, 1984, 84-2 C.P.D. ¶ 600.

Accordingly, we dismiss the protest in part and deny the protest in part.

*for Seymour S. Gross*  
Harry R. Van Cleve  
General Counsel