



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Janke & Company, Inc.

File: B-225710.3

Date: March 18, 1988

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### DIGEST

Protest based on allegation that test requirement included in solicitation is vague is untimely and will not be considered on the merits when not filed prior to closing date for receipt of initial proposals.

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### DECISION

Janke and Company, Inc., protests as defective a test requirement included in request for proposals (RFP) No. F41608-87-R-C033, issued by the San Antonio Air Logistics Center, Kelly Air Force Base, Texas, for diesel-powered hydraulic test stands. Janke contends that the solicitation provision requiring that the awardee make available to the Air Force one preproduction unit for aircraft compatibility testing failed to contain measureable criteria delineating what would constitute satisfactory completion of the test and that this lack of standards precluded a fair evaluation of offers.

We dismiss the protest.

Janke previously protested two other test requirements included in this same solicitation which were considered in our decision Janke & Company, Inc., B-225710, B-226897, June 12, 1987, 87-1 CPD ¶ 589.1/ Janke states that it is challenging the aircraft compatibility test at this time--more than 1 year after its initial protest and approximately 10 months following the closing date for receipt of initial proposals--because the defective nature of this requirement, unlike the two other requirements, was not

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1/ In this decision, we sustained Janke's protest and recommended that the two challenged preproduction environmental tests (a low temperature test and a noise level test) be revised to conform with the standards established as achievable in previous procurements of diesel engine-powered test stands.

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apparent on the face of the solicitation but, rather, first became apparent during recent depositions of Air Force personnel. Only upon reading the deposition transcripts, Janke maintains, did it discover that the Air Force never established procedures for conducting this test. The protest is untimely.

Our Bid Protest Regulations require protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals to be filed before that date. 4 C.F.R. § 21.1(a)(1) (1987).

Janke's characterization and explanation of its protest notwithstanding, the essence of Janke's new protest is that the description and instructions for the compatibility test were vague and incomplete, and that this absence of objective standards potentially allowed for inequality among prospective offerors since those with foreknowledge of the contracting activity's intentions regarding implementation of the test possibly enjoyed a competitive advantage in the preparation of proposals. Since the absence of details was apparent from the RFP, it is clear that Janke should have known of this basis of protest upon review of the RFP, at the same time it became aware of the two other alleged solicitation defects previously raised. Knowledge that the agency, also did not have in place any undisclosed procedures or measurable criteria for this test was not a prerequisite for the filing of this protest.

Since Janke had reason to know of its current basis of protest upon examination of the solicitation but nevertheless did not file this protest until many months after the solicitation's initial closing date, its protest is untimely and therefore will not be considered on the merits.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Michael R. Golden".

Ronald Berger  
Deputy Associate  
General Counsel