

DOCUMENT RESUME

03334 - [A2433567]

[Alleged Government Neglect in Failure to Furnish Copy of Solicitation to Firm on Qualified Products List]. B-180941. August 29, 1977. 2 pp. + enclosure (1 pp.).

Decision re: Eober Chemicals, Inc.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Defense Supply Agency: Defense General
Supply Center, Richmond, VA.
Authority: 4 C.F.P. 20.2. 53 Comp. Gen. 533, 534.

Company alleged that the Government's failure to furnish it a copy of the solicitation after qualifying its product constituted gross neglect entitling the firm to compensation. Filing of the protest almost 3 months after receipt of the adverse response was untimely; the protest was not considered. (SW)

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DECISION



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

**Rileen Pettit
Proc. I**

FILE: B-189841

DATE: August 29, 1977

MATTER OF: Bober Chemicals Inc.

DIGEST:

Protest, alleging Government neglect in failing to furnish copy of solicitation to firm on Qualified Products List, filed with GAO more than 10 working days after receipt of procuring activity's post-award letter advising protester that solicitation had not been furnished because solicitation supply was exhausted, is untimely and not for consideration on merits.

Bober Chemicals Inc. (Bober) protests the award of a contract for cleaning compounds, resulting from invitation for bids (IFB) No. DSA400-77-B-0736, issued in January 1977 by the Defense Logistics Agency (DLA), Defense General Supply Center, Richmond, Virginia.

The IFB called for compounds under Military Specification MIL-C-25769H(USAF). The record shows that Bober's Chemical Product 231 was qualified as conforming to that specification on October 19, 1976. By letter of the same date, the Department of the Air Force advised Bober that the firm would appear on the Qualified Products List.

Bober did not receive a copy of the subject IFB. The protester contends that, considering the effort and expense required to qualify its product, DLA's failure to furnish it a copy of the solicitation constitutes gross neglect entitling the firm to compensation.

Although Bober knew of the issuance of the solicitation in January, it waited until May 1977 to ask DLA why the firm had not been furnished a copy of the IFB. By letter of May 11, 1977, confirming an earlier telephonic conversation, DLA informed the protester as follows:

"The file for this solicitation indicates that the solicitation initially was issued to fourteen firms on 7 January 1977 and was synopsised in the Commerce Business Daily. As there were 120 names on the

Bidders Mailing List, the entire list was not used. A copy of a letter dated 18 January 1977 to you from * * * the Small Business Administration Procurement Center Representative, was forwarded to the buyer, who requested that copies of the Invitation for Bids be mailed to your firm. Also, on 18 January 1977, a form letter was sent to your firm informing you that the supply of solicitation number DSA-400-77-B-0736 was exhausted. Copies of these form letters are not returned to the buyer until after bids are opened.

"Although your firm had been added to the Qualified Products List for specification MIL-C-25769H/USAF in November 1976, this office was not made aware of the addition until your telephone call.

"We regret that your firm did not have an opportunity to bid on this solicitation. However, I assure you your firm will receive future solicitations for Cleaning Compounds purchased under the above military specification."

Bober's letter of protest, dated August 4, 1977, was received by our Office on August 9, 1977.

Our Bid Protest Procedures, 4 C.F.R. part 20 (1977), require that protests initially filed with a contracting agency must be filed with our Office within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action, and that other protests must be filed not later than 10 working days after the basis for the protest is, or should have been, known. 4 C.F.R. § 20.2(a) and (b) (1977). Because our Bid Protest Procedures have been published in the Federal Register, protesters such as Bober are charged with constructive notice of their provisions. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533, 534 (1974), 74-1 CPD 47.

Bober's protest was filed with our Office almost 3 months after receipt of DLA's adverse response and after Bober knew, or should have known, the basis for the protest. The protest is, therefore, untimely and not for consideration on the merits.

for Milton J. Aowler
Paul G. Dembling
General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

Mileen Pettit
Proc. I



OFFICE OF GENERAL COUNSEL

IN REPLY
REFER TO: B-189641

August 29, 1977

The Honorable James G. Martin
House of Representatives

Dear Mr. Martin:

We refer to your letter of August 10, 1977, concerning the protest of Bober Chemicals Inc. against the award of a contract under solicitation No. DSA400-77-B-0736, issued by the Defense Logistics Agency.

By decision of today, copy enclosed, we have found the protest untimely and not for consideration on the merits.

Sincerely yours,

for Milton J. ...
Paul G. Dembling
General Counsel

Enclosure