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**DECISION**



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

**FILE:** B-205485

**DATE:** December 7, 1981

**MATTER OF:** Valley Foods

**DIGEST:**

Complaint alleging that 100 percent performance bond requirement in grantee's solicitation unduly restricts competition, received at GAO after bid opening, is untimely and will not be considered on merits, since alleged deficiency was apparent on face of solicitation.

Valley Foods has filed a complaint with our Office alleging that a 100 percent performance bond requirement imposed by the Western Reserve Area Agency on Aging, Cleveland, Ohio, a grantee of the Department of Health and Human Services, unduly restricts competition. We are dismissing the complaint as untimely.

Valley Foods states that it made exhaustive efforts to obtain the \$1.7 million bond required by the Agency on Aging's solicitation before contacting it on October 30, 1981, to clarify requirements. At that time, the firm was told that the requirement would not be waived; it therefore did not submit a bid at the November 4, 1981 bid opening.

Valley Foods argues that the requirement is unusual, excessive, and discriminatory, in that small businesses are unable to meet it; this is shown by the fact that a national company (presumably large) has been the only bidder on similar procurements during the past two years, Valley Foods states. Since Valley Foods has been involved with nutrition programs for the elderly for the past seven years, the firm continues, it believes it is fully qualified to perform the services in question.

While in the past, in the context of grant complaints, we have not imposed the strict timeliness rules set forth in our Bid Protest Procedures, 4 C.F.R. § 21.2 (1981), we recently stated that in the future we would consider only complaints filed within a "reasonable" time. For complaints such as this, alleging deficiencies apparent on

the face of a solicitation, this generally is the same time required by our procedures--before bid opening or the time for receipt of initial proposals, Brumm Construction Company, B-201613, October 6, 1981, 61 Comp. Gen. \_\_\_\_\_, 81-2 CPD \_\_\_\_\_; Caravelle Industries, Inc., B-202099, April 24, 1981, 81-1 CPD 317.

In Valley Foods' case, the time-date stamp indicates its letter, dated November 5, 1981, was received in our Office on November 12, 1981. Since this was not before bid opening, the complaint is untimely and we will not consider it on the merits.

The complaint is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel