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DECISION



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

82-1 cpd 341

FILE: B-205863.3

DATE: April 13, 1982

MATTER OF: Joerns Furniture Company, Inc.--
Request for Reconsideration

DIGEST:

Protester's argument that no basis of protest existed until agency made awards is rejected because protest filed after closing date against alleged improper increase in Maximum Order Limitation under Federal Supply Schedule solicitation is a protest against an alleged impropriety apparent on the face of the solicitation. Under GAO's Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1), protest based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the date for receipt of proposals must be filed prior to that date.

Joerns Furniture Company, Inc. (Joerns), requests reconsideration of our decision in the matter of Joerns Furniture Company, Inc., B-205863, March 2, 1982, 82-1 CPD.

In our prior decision Joerns argued that it filed a protest in October 1981 with the General Services Administration against amendment No. 2 to the agency's solicitation No. FNMS-S1-1116N increasing the Maximum Order Limitation (MOL) amount on Federal Supply Schedule items. We noted that Joerns' letter communicating the alleged protest was not filed with the contracting agency prior to the solicitation's closing date. Therefore, we held that even if Joerns' October 1981 letter constituted a protest, the subsequent protest to this Office could not be considered under section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. § 21.2(a), since the protest was not timely filed with the agency.

Joerns disagrees with the conclusion in our prior decision that its protest was untimely. According to Joerns, the action by the General Services Administration which "triggered" the company's protest was the making

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of awards in December 1981 at the increased MOL figure. In Joern's opinion, there was no protest issue until these awards were made. Joerns argues that until the awards were made, the agency was not "obligated" to hold to the increased MOL figure and the bidders did not have any right to an award at the increased figure. Rather, the solicitation amendment increasing the figure merely gave the agency an option.

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The above arguments by Joerns do not change the fact that it was a protest against an alleged impropriety apparent on the face of amendment No. 2 to the solicitation, the right of the agency to make awards up to the amount of the new MOL, and, under section 21.2(b)(1) of our Bid Protest Procedures, had to be filed prior to bid opening. We believe the argument that the awards "triggered" the protest is answered by the fact that Joerns filed, though untimely, a protest with GSA 2 months before the awards.

We affirm the prior decision dismissing the protest.

Melvin J. Fowler
for
Comptroller General
of the United States