

DOCUMENT RESUME

03593 - [A2453609]

[Untimely Protests]. E-189736; E-189879. September 1, 1977. 1 pp.

Decision re: D. Moody & Co., 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 VI.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Air Force: Air Logistics Center, Oklahoma City, OK.

Authority: A.S.P.F. 7-104.48. 4 C.F.R. 20.2(b)(1).

The protester objected to the rejection of two bids as nonresponsive. Where the invitation for bids contained a "New Material" clause, a protest against the rejection of a bid offering material which had been overhauled essentially related to an alleged impropriety in the solicitation and, therefore, was untimely since it was not filed prior to the bid opening date. (Author/SC)

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**DECISION**



*Richard Mark*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

FILE. B-189736, B-189879

DATE: September 1, 1977

MATTER OF: D. Moody & Company, Inc.

**DIGEST:**

Where IFB contained "New Material" clause, protest against rejection of bid offering material which has been overhauled essentially relates to alleged impropriety in solicitation and is untimely under Bid Protest Procedures when not filed prior to bid opening date.

D. Moody & Co., Inc. (Moody) protests the rejection of its bids on two separate invitations for bid (FD2030-77-25891 and FD2030-77-0995) issued by the Oklahoma City Air Logistics Center, U.S. Air Force. Moody contends that the Air Force was arbitrary and capricious and that the rejection of its bids offering overhauled spare parts for aircraft was against the best interests of the Government.

We have been informed that each solicitation contained a "New Material" clause in accordance with Armed Services Procurement Regulation (ASPR) § 7-104.48. This clause specifically requires all supplies and components provided under the contract to be new and not used or reconditioned. Under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), a protest based upon improprieties apparent on the face of the solicitation must be filed prior to the closing date for receipt of the bids. The subject protests are untimely because they were filed after bid opening.

Accordingly, the protests are dismissed.

We call attention, however, to the fact that this Office has frequently discussed issues similar to that raised by Moody in these protests. See D. Moody & Co., Inc., B-178591; B-178970, February 4, 1974, 74-1 CPD 48; D. Moody & Co., Inc., B-180732; B-181971; B-182091, July 1, 1975, 75-2 CPD 1; 47 Comp. Gen. 390, 396 (1968).

*for* *Paul G. Dembling*  
Paul G. Dembling  
General Counsel