

4492
04467

DECISION



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

FILE: B-190573

DATE: December 8, 1977

MATTER OF: Stadiums Unlimited, Incorporated

DIGEST:

1. Protest against allegedly restrictive and proprietary solicitation specifications filed initially with contracting agency is untimely since it was not filed with GAO within 10 working days after formal notification of initial adverse agency action (issuance of amendment which did not fully meet protester's complaints).
2. Whether bidder is able to supply appropriate item specified in IFB is matter of responsibility, and agency's affirmative determination in this regard will not be reviewed by GAO except in limited circumstances. Moreover, whether or not there is compliance under a contract is a matter of contract administration which will not be reviewed by GAO.

Stadiums Unlimited, Incorporated (Stadiums), has protested against the making of any award under General Services Administration's (GSA) invitation for bids (IFB) No. 2PN-FLF-J0550, for bleacher seats.

Stadiums contends that the specifications were unduly restrictive and proprietary to one manufacturer, Miracle Recreation Equipment Company. On September 12, 1977, and September 19, 1977, Stadiums by letters to the procuring activity set forth why it believed the specifications were unduly restrictive and proprietary. As a result, two amendments of the solicitation were issued with effective dates being September 19, 1977, and October 6, 1977. After a review of the second amendment, Stadiums concluded that all of its recommended changes were not included and, therefore, "assumed they [changes] would be given no further consideration by any further pursuits on our [Stadiums'] part." At that time, Stadiums decided not to submit a bid since it would not be responsive.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1977), provide that where a protest has been initially filed with the agency on a timely basis, as here, any subsequent protest to our Office will be considered if filed within 10 days of formal notification of initial adverse agency action.

8-190573

The record does not indicate the exact date Stadiums received formal notification of initial adverse agency action, the second amendment. However, Stadiums, in a November 15, 1977, letter to our Office, indicates that it received notification on approximately October 11, 1977. Since Stadiums did not file its protest with GAO until October 31, 1977, which was over 10 days after initial adverse agency action, the protest is untimely and not for consideration on the merits.

Further, Stadiums contends that no bidder will be able to fully comply with all of the specifications. The ability of a bidder to supply the appropriate item specified in an IFB is a matter of responsibility. See 53 Comp. Gen. 396 (1973). The award of a contract will necessarily involve an agency's affirmative determination of a bidder's responsibility. Federal Procurement Regulations (FPR) § 1-2.407 (1964 ed., amend. 139). Therefore, Stadiums' contention constitutes a protest against such a determination.

This Office does not review protests against affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. Since neither exception has been alleged, this issue is not for our consideration. Moreover, whether or not there is compliance under a contract is a matter of contract administration which will not be reviewed by this Office. Dyneteria, Inc., 8-186828, July 22, 1976, 76-2 CPD 72.


Paul G. Dembling
General Counsel