

**DECISION**

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

FILE: B-196136

DATE: January 29, 1980

MATTER OF: Consolidated Photocopy Company, Inc.

**DIGEST:**

[Protest against agency's cancellation of solicitation, resolicitation of requirements and award of contract based on alleged invalidity of cancellation and allegedly improper wage determination in second solicitation, filed with GAO more than 10 days after protester first knew of cancellation and resolicitation and after bid opening, is dismissed as untimely filed.]

3743 Consolidated Photocopy Company, Inc. (CPC), protests the United States Department of Agriculture's (USDA) cancellation of invitation for bids (IFB) No. IFB-00-80-B-3 (IFB-3) for copy machine maintenance and repair services and the agency's resolicitation and award of a contract for those requirements to 3744 National Business Systems, Inc. (National), under IFB No. IFB-00-80-B-6 (IFB-6). The protester contends that there was no valid reason to cancel IFB-3, that IFB-6 included an improper wage determination, and that, therefore, USDA should reinstate the canceled solicitation and make award to CPC on the basis of its original bid. For the reasons discussed below, we find the protest untimely filed and not for consideration on the merits.

IFB-3 was issued on August 8, 1979; of the three bids received at the August 29 bid opening, CPC was tied as the low bidder. In reviewing the bids, however, USDA discovered that the IFB did not include the provisions prescribed by Federal Procurement Regulations § 1-12.904-1 (1964 ed. amend. 190) concerning the Service Contract Act of 1965, as amended, 41 U.S.C. §§ 351-357 (1976). USDA amended IFB-3 on August 31, 1979, to cancel the IFB in its entirety and advise bidders that a new solicitation would be issued shortly.

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IFB-6, resoliciting the agency's requirements, was issued on September 6, 1979; three bids, including that of the protester, were received at the September 19 bid opening and award was made to National on the following day. We received CPC's protest on September 21, 1979, and find it untimely filed in several respects.

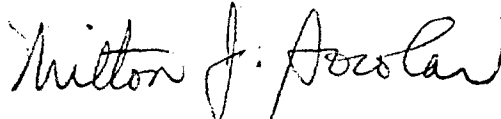
CPC was notified of the cancellation of IFB-3 by the August 31 amendment; thus, a protest against the cancellation, in order to be timely filed, should have been made within 10 working days after the protester's receipt of the amendment. 4 C.F.R. § 20.2(b)(2) (1979); See, Time Oil Co., B-192180, July 7, 1978, 78-2 CPD 25; L & M Cleaning Company, B-190958, March 21, 1978, 78-1 CPD 222. CPC's protest against USDA's failure to award a contract to the firm under IFB-3 and the cancellation of that solicitation, filed with our Office 14 working days after the protester was notified of the cancellation, is clearly untimely.

The amendment also put CPC on notice that USDA intended to resolicit its requirements by issuing another solicitation. That intention was effected by issuing IFB-6 on September 6, 1979, and CPC knew the basis of its protest against the resolicitation upon receipt of IFB-6, requiring that a protest be filed within 10 working days. Furthermore, we have held that a protester cannot accept cancellation of a solicitation by responding to a resolicitation and then protest the cancellation after learning that the firm was not entitled to award under the resolicitation. Sheriff Construction Company, Inc., B-192357, October 2, 1978, 78-2 CPD 249; Cessna Aircraft Company, et al., 54 Comp. Gen. 97, 110 (1974), 74-2 CPD 91.

Finally, CPC's assertion that IFB-6 included a wage determination which was not sanctioned by the Department of Labor questions a purported defect which was readily apparent from an examination of the IFB. Because protests based on alleged improprieties in

a solicitation which are apparent prior to bid opening must be filed prior to bid opening, 4 C.F.R. § 20.2(b)(1) (1979), CPC's protest filed with our Office 2 days after the September 19 bid opening is untimely filed.

The protest is dismissed.

A handwritten signature in cursive script, reading "Milton J. Socolar".

Milton J. Socolar  
General Counsel