

DECISION



13273 Melody
PL-CCG
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-198079

DATE: March 28, 1980

MATTER OF: General Fire Extinguisher Corporation

DIGEST:

CNG00192

1. ~~Protest~~ ^{The} allegation raised after bid opening that advertised procurement should have been negotiated ~~was~~ untimely under GAO Bid Protest Procedures and not for consideration.
2. ~~Whether~~ [↓] bidder is capable of meeting solicitation requirements involves question of bidder's responsibility, affirmative determination of which GAO no longer reviews unless either fraud is shown on part of procuring officials or solicitation contains definitive responsibility criteria which allegedly have not been applied.

The protest was dismissed

AGC 00385 General Fire Extinguisher Corporation (General) protests the award of a contract by the Defense Construction Supply Center (Defense) to the MAP Corporation (MAP) under solicitation No. DLA700-80-B-0325. DLG 00330

General contends that this procurement should have been negotiated rather than advertised because extinguishers with the technical performance requirements spelled out by the solicitation are not normally available in the commercial market. ~~General~~ ^{The protester} further alleged that the specifications were deficient in that they did not require first article approval testing.

Our Bid Protest Procedures provide that:

" * * * protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."
4 C.F.R. §20.2(b)(1) (1979).

009375 111932

[Protest Against Contract Award]

Since these allegations involve alleged improprieties in the solicitation which were apparent prior to bid opening, they should have been raised not later than that date. The protest, however, was not received in our Office until after bid opening; consequently, these allegations are untimely filed and not for consideration. See Group Hospital Service, Inc., (Blue Cross of Texas), B-190401, February 6, 1979, 79-1 CPD 245.

General further alleges that MAP does not have the prior experience, facilities, or equipment necessary to perform the contract.

These allegations relate to MAP's responsibility as a prospective contractor. This Office does not review protests of affirmative determinations of responsibility unless fraud on the part of the procuring officials is alleged or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Bowman Enterprises, Inc., B-194015, February 16, 1979, 79-1 CPD 121. Neither exception is alleged here.

The protest is dismissed.

Harry R. Van Cleave

for Milton J. Socolar
General Counsel