

13801 Boyle Proc I

**DECISION**



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

*[Protest of GSA Contract Award]*

FILE: B-197705

DATE: May 23, 1980

MATTER OF: Douglass Industries, Inc.

*DLG 04685*

**DIGEST:**

Protester contends that basis of protest against express RFP provision--that competitor's fabric was proper alternate to protester's fabric--did not arise until protester discovered that competitor's offer was determined to be acceptable by contracting agency. Contention is without merit and ~~basis of protest is~~ untimely under 4 C.F.R. § 20.2(b)(1) (1980), since alleged solicitation impropriety was apparent and protest should have been filed prior to RFP's closing date.

Douglass Industries, Inc. (Douglass), protests on the ground that it is the only competitor eligible for award of item 3 under request for proposals (RFP) No. BO/DQ-R-00136-2 NEG issued by the General Services Administration (GSA) for certain drapery and upholstery fabric. *AGC00007*

The RFP stated that item 3 was for a quantity of fabric manufactured by Douglass or another fabric manufactured by Cohama Specifier (Cohama) and the RFP provided that award would be made based on the lowest delivered unit price. *DLG 04686*

On reviewing the solicitation, Douglass states that it knew there was no alternate for its fabric listed on item 3 since no alternate fabric had been published in an approved list issued prior to issuance of the solicitation and Douglass had not been notified of any change to that list; moreover, prior to the closing date, Douglass says it was led to believe by the contracting officer that no offer from a source other than Douglass would be accepted for item 3. After the closing date, Douglass learned that Cohama submitted an offer

*112356*

*010437*

at a price lower than Douglass' and that the contracting agency considered the Cohama fabric to be acceptable. Douglas contends that the Cohama fabric is not a properly designated alternate for the Douglass fabric and, in fact, it was not designated as a standard fabric at all. In Douglass' view, therefore, the designation in item 3 of the instant solicitation of the Cohama fabric as an alternate to the Douglass fabric was totally invalid--with as much effect as a typographical error.

GSA responds that Douglass' protest concerns an explicit provision of an RFP and such a protest, having been filed after the date for receipt of offers, is clearly untimely under our Bid Protest Procedures 4 C.F.R. § 20.2(b)(1) (1980).

In reply, Douglass states that the protest is timely since no adverse agency action was apparent until January 31, 1980, when Douglass discovered that an offer from Cohama had been accepted on item 3, and the protest was filed within 10 working days of that date.

Douglass' contention--that no adverse agency action was apparent until it learned that the Cohama offer was accepted--is without merit. In a similar situation, we dismissed a protest contending that the basis of protest did not arise until the contracting agency determined that a bid, which was responsive to the solicitation, was eligible for award. In CSA Reporting Corporation, 59 Comp. Gen. \_\_\_\_ (B-196359, March 27, 1980), 80-1 CPD 225, we concluded that the contention--that the basis of protest against the solicitation's wage determination provision did not arise until award of the contract--was without merit since the alleged impropriety should have been apparent from the solicitation. See also JDL General Contractors & Associates - Request for Reconsideration, B-183415, June 6, 1975, 75-1 CPD 344 (We concluded that a protest against certain specifications as being unduly restrictive involved an alleged apparent solicitation impropriety which must be filed prior to bid opening in order to be timely.).

In our view, the RFP clearly provided that either the Douglass fabric or the Cohama fabric would be acceptable for the item 3 requirement. It is equally clear that Douglass' protest is against the validity

of the basis for that RFP provision. As GSA notes, under our Bid Protest Procedures, protests against apparent solicitation improprieties must be filed prior to the closing date in order to be timely. CSA Reporting Corporation, supra. Since Douglass' protest was not filed prior to the closing date, it is untimely and will not be considered.

Further, Douglass' unsupported statement that the contracting officer led it to believe that only its offer would be acceptable for item 3--contrary to an express provision of the RFP--does not constitute a sufficient basis under the circumstances for our Office to consider the matter on the merits.

Protest dismissed.

*Harry R. Van Cleave*  
for Milton J. Socolar  
General Counsel