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DECISION



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

FILE: B-204685

DATE: December 29, 1981

MATTER OF: Sanitary Ice Systems, Inc.

DIGEST:

1. Protest that specification requirement for vent hoods over ovens in solicitation for relocation of pastry kitchen filed in GAO after bid opening is timely as protest was initially filed with agency prior to bid opening and GAO protest was filed within ten days of a conversation which contracting agency argues was formal notification that protest filed with agency was denied.
2. Since the agency is in the best position to know its needs and is responsible for keeping kitchen facility a suitable workplace, GAO has no basis to object to specification requirement for vents and hoods over ovens as a part of agency's overall plan for cooling the facility even though protester maintains that its ovens are self-venting and therefore the requirement is unnecessary.

Sanitary Ice Systems, Inc., a potential subcontractor, protests the inclusion of a requirement for oven hood vents and a fire suppression system in IFB F22600-81-B0049 issued by Keesler Air Force Base, Mississippi, for the relocation of a pastry kitchen. For the following reasons, we deny the protest.

The IFB was issued on July 24, 1981, with an amended opening date of September 3. On September 2, Sanitary, a supplier of self-venting ovens, filed a protest with the agency contending that the requirement for vent hoods was restrictive. Sanitary then filed a protest with our Office on September 8. The protester contends that the

use of its self-venting ovens would obviate the need for two separate ventilation hoods required by the IFB specification and a corresponding fire suppression system and save the Government money. It further contends that it has been prevented from bidding on the contract due to these requirements.

The Air Force argues that Sanitary's protest to our Office, which is based on an alleged impropriety in the solicitation, is untimely as it was filed on September 8, after the protester was informed by the contracting officer on September 2 that the September 3 bid opening would not be postponed. It is the agency's view that as Sanitary knew both the basis for its protest and that the agency disagreed with its position prior to bid opening, it was obligated to file its protest with our Office prior to the September 3 opening date.

We disagree with the agency. It is true that our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981), require that protests of solicitation improprieties be filed prior to bid opening. The agency, however, ignores the import of Sanitary's protest filed with it on September 2. Our Procedures also require that where a timely protest has been filed initially with the contracting agency any subsequent protest to our Office can be filed within ten days of formal notification or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.1(a). Sanitary's protest filed on September 2 with the agency was clearly timely. Even if we are to consider the contracting officer's September 2 conversation with the protester as a formal notification that Sanitary's protest filed with the agency was denied, Sanitary's September 8 protest to our Office was timely filed within the ten day limit set forth in 4 C.F.R. § 21.2(a).

We have recognized that Government procurement officials generally are in the best position to know the Government's actual needs, and are therefore best able to draft appropriate specifications. Particle Data, Inc.; Coulter Electronics, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257. Consequently, we will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Edward E. Davis Contracting, Inc., B-198725, January 13, 1981, 81-1 CPD 19.

The agency agrees with the protester that the fire suppression systems for the oven hoods contained in the specification are not required and indicates that they will be deleted from the specification. It continues to maintain, however, that the requirement for oven hoods and vents are necessary, whether or not self-venting ovens are installed.

The agency reports that in order to ventilate the entire kitchen area, which in addition to the ovens contains a doughnut machine and steam kettles, four exhaust vent systems are needed - one over the dishwashing area, one over the doughnut machine-steam kettle area and one over each of the two ovens. The agency states that the ventilation system for the non-air-conditioned facility requires that kitchen heat be removed by vents and hoods over the ovens. Although Sanitary argues that the heat from its ovens would be directly removed through a nine inch exhaust stack we are not prepared to conclude that the agency, which is responsible for keeping the kitchen facility a suitable place in which to work, had no basis for requiring vents and hoods over the ovens as a part of its plan to control heat in the entire kitchen facility.

The protest is denied.

Harry D. Chas. Cline
For Comptroller General
of the United States