

DECISION



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

To Gary
25858

FILE: B-210625

DATE: May 6, 1983

MATTER OF: Chemray Coatings Corporation

DIGEST:

1. Protest that agency improperly waived requirements of qualified products list (QPL) in a solicitation is untimely since it was not filed prior to bid opening.
2. Protest filed more than 10 working days after basis for protest is known is untimely and will not be considered.

Chemray Coatings Corporation protests the award of a requirements contract for various items under invitation for bids (IFB) No. 10PR-XKS-5376, issued by the General Services Administration (GSA).

The IFB requested bids for various types of interior and exterior paint and required that all paint offered be qualified products. Chemray is listed as a "Composition L" supplier under the appropriate qualified products list (QPL) which designates suppliers of products which comply with applicable air pollution standards. The solicitation permitted either "Composition L" or "Composition G" suppliers to furnish the protested items, provided they in fact supply "Composition L" products. According to Chemray, current QPL specifications exclude "Composition G" suppliers from furnishing "Composition L" products unless they are also listed as approved sources under "Composition L" or have submitted samples for appropriate qualification testing. Chemray therefore contends that GSA "improperly waived the QPL requirement" by not limiting bidding solely to suppliers listed under "Composition L." For the reasons indicated below, we dismiss the protest.

Under our Bid Protest Procedures, 4 C.F.R. § 21.2 (1983), protests based upon alleged improprieties which are apparent prior to bid opening must be filed either with the contracting agency or our Office prior to bid opening in order to be considered timely filed. Here, Chemray was or should have been aware of the alleged waiver of the QPL requirements prior to bid opening on

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December 16, 1982. Yet, its protest was not filed with the contracting agency until January 5, 1983. Therefore, insofar as Chemray's protest concerns the waiver of the QPL requirements in this particular solicitation, it is untimely and will not be considered on the merits.

However, Chemray also appears to be arguing that GSA improperly failed to obtain permission to waive the QPL requirement from the appropriate technical activity having responsibility for these items. Chemray states that it did not learn of this impropriety until either 1 day before or 1 day after bid opening. However, even if the protester first learned of the alleged impropriety the day after bid opening, December 17, 1982, our Bid Protest Procedures, 4 C.F.R. § 21.1(b)(2), also require protests to be filed no later than 10 working days after the basis of the protest is known or should have been known, whichever is earlier. As stated previously, Chemray's protest was not filed with the contracting agency until January 5, 1983, or more than 10 working days after Chemray knew this basis for its protest.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel