

DECISION



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

26224

FILE: B-211555

DATE: September 14, 1983

MATTER OF: Sandia Die & Cartridge

DIGEST:

1. Protest alleging that specifications contained in solicitation are unduly restrictive is dismissed as untimely since it was not filed before bid opening date.
2. Although protester alleges that it did not know of requirement concerning time for filing of a protest, untimely protest may not be considered because bidders are on constructive notice of the requirement.

Sandia Die & Cartridge (Sandia) protests a provision contained in invitation for bids (IFB) No. 89-M-APHIS-83, issued by the Department of Agriculture (Agriculture) for insect traps and inserts. Sandia contends that the provision in the IFB prohibiting company identification on the traps is unduly restrictive.

We dismiss the protest as untimely.

Agriculture issued the IFB on March 8, 1983. A March 22 amendment stated that "No company identification shall appear on the traps." Sandia responded to the IFB submitting a bid responsive to the IFB (i.e., complying with the identification prohibition) and an alternate bid proposing a lower price for traps containing company identification.

Bids were opened on April 7, 1983. Initially, Agriculture rejected both of Sandia's bids as non-responsive; Sandia protested to the agency on April 12, 1983. The agency reconsidered its evaluation of Sandia's bid and accepted the responsive bid for award. Sandia continues to protest that the provision prohibiting company identification is unduly restrictive and that Agriculture should have accepted its lower-priced alternate bid.

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Our Bid Protest Procedures require that an allegation of an impropriety in a solicitation which is apparent prior to bid opening be filed before that date with either the General Accounting Office or the contracting agency. 4 C.F.R. § 21.2 (1983). Here, the alleged impropriety was apparent to the protester upon receipt of the March 22 amendment, yet no protest was filed until after bid opening.

Although Sandia states that it was unaware of the protest procedures, this does not provide a basis for our Office to waive them because bidders are on constructive notice of our Bid Protest Procedures since they are published in the Federal Register (at 240 Fed. Reg. 17979 (1975), as amended by 48 Fed. Reg. 1931 (1983)) and the Code of Federal Regulations (at 4 C.F.R. part 21 (1983)).

Since Sandia failed to submit a timely protest either to Agriculture or to our Office, we will not consider the matter on the merits.

Harry R. Van Cleve

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Acting General Counsel