

DECISION



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

27005

FILE: B-212829.2

DATE: December 16, 1983

MATTER OF: John Crane Houdaille, Inc.

DIGEST:

1. Protest based upon the fact that protester has protest pending with GAO concerning prior alleged improper award by contracting agency for same product is not a reviewable basis of protest.
2. Where initial protest fails to state basis of protest, subsequent allegation that the contracting agency should have procured product by formal advertising rather than by negotiation raised for the first time after closing date for receipt of proposals is untimely under GAO Bid Protest Procedures.

John Crane Houdaille, Inc. (JCH), protests any award of a contract for 75,361 plane and case seals under request for proposals (RFP) No. DAAE07-83-R-A-599, issued by the United States Army Tank-Automotive Command, Warren, Michigan.

We dismiss the protest as untimely.

By telex received in this Office on October 26, 1983, JCH stated the basis of the protest was that award would be improper because JCH has a protest pending in our Office concerning a prior alleged improper award by the contracting agency for the same product. In a followup letter dated November 9, 1983, characterized as "clarification" of its initial protest, JCH states that the procurement should have been solicited by formal advertising rather than by negotiation.

The protester's telex failed to state a ground of protest cognizable under our Bid Protest Procedures. 4 C.F.R. part 21 (1983). In the absence of an allegation that the contracting agency is conducting the current procurement improperly under applicable laws and regulations, the fact JCH has a protest pending in our Office against a prior procurement for the same product does not constitute a basis of protest.

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Furthermore, the attempt to clarify the initial telex of protest by letter dated November 9, 1983, is insufficient to constitute a timely protest against the contracting agency's use of negotiation rather than formal advertising. Since the telex did not state a ground of protest, but merely referred to JCH's pending protest not involving the formal advertising versus negotiation issue, it is necessary for the letter of protest to independently satisfy the timeliness requirements of our Bid Protest Procedures. See for example Tractor Jitco Inc., B-208476, January 31, 1983, 83-1 CPD 98.

Under these procedures, a protest based on alleged improprieties in any type of solicitation which are apparent prior to the bid opening or the closing date for the receipt of initial proposals must be filed before such date. 4 C.F.R. § 21.2(b)(1). The method of procurement should have been apparent from receipt of the RFP. Therefore, JCH's allegation that the procurement should have been formally advertised rather than negotiated, raised for the first time after the closing date for receipt of proposals (October 26, 1983), is untimely.

Accordingly, the protest is dismissed.

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