

DECISION



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

FILE: B-214697

DATE: August 13, 1984

MATTER OF: Container Service, Inc.

DIGEST:

1. Where protester initially files timely protest and later supplements it with new and independent grounds of protest, the later grounds of protest must independently satisfy timeliness requirements. Such grounds are untimely when they are based on an impropriety apparent from the face of solicitation, but were not filed prior to closing date for submission of offers.
2. Protest against agency use of negotiated procurement is denied where agency decides to conduct negotiated procurement because of difficulty in drafting adequate technical specifications and protester's allegations regarding the specifications concede this point.

Container Service, Inc. (CSI), protests against request for proposals (RFP) No. DAAE07-84-R-J095, for unit assembly components of truck brakes, issued by the Army. CSI alleges that this acquisition should have been solicited by formal advertising under 10 U.S.C. § 2304(a) (1982), and that there is no justification for the Army's determination that the procurement be negotiated under 10 U.S.C. § 2304(a)(10) (1982). The Army states it conducted a negotiated procurement because it lacked certain manufacturing information, quality assurance provisions and an acceptable packaging method and, therefore, needed the flexibility to negotiate with offerors.

We dismiss the protest in part, and deny it in part.

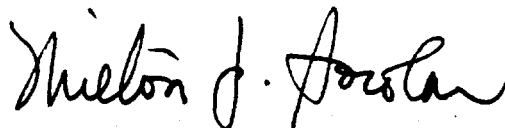
CSI did not submit an offer in response to this RFP, nor has CSI timely alleged that it was precluded by the RFP specifications from submitting an offer. As the Army points out in comments to the conference held under our Bid Protest Procedures, CSI conceded at the conference that the reason it did not submit a proposal related solely to a technical specification which CSI believed was defective. We note that this specification was changed during the course of negotiations with other offerors.

Moreover, this and other alleged specification defects were not protested timely since they were only raised as an issue in CSI's final comments to our Office. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), require that protests based upon alleged improprieties which are apparent in the solicitation prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of proposals. In addition, we have stated that where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later-raised allegations must satisfy independently the timeliness requirements. Star-Line Enterprises, Inc., B-210732, Oct. 12, 1983, 83-2 C.P.D. ¶ 450.

CSI was aware of the RFP and its contents; in fact, it acknowledged an amendment to the RFP. The closing date for the RFP was April 6, 1984. Since CSI first raised allegations of defective specifications in its June 11, 1984, letter to our Office, commenting on the agency report, these allegations are untimely.

With regard to the protest against the procurement procedure used, the agency asserts, and the protester does not deny, that the specifications for the solicited item were not suitable for use in an advertised procurement. In fact, CSI's untimely contentions that the specifications are defective highlight the difficulties in drafting specifications in a manner which would have permitted formal advertisement of this requirement. Thus, we find no basis to object to the Army's use of negotiated procurement procedures.

Finally, the agency reports that it expects to conduct formally advertised procurements for this item as soon as it is feasible to do so with an adequate technical data package.

for 
Comptroller General
of the United States