

DECISION

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

Golden
P.L.I.
30414

FILE: B-218100

DATE: February 11, 1985

MATTER OF: Birdsboro Corporation

DIGEST:

Protest against alleged defective specifications contained in step-one of two-step formally advertised procurement filed after the closing date for receipt of step-one technical proposals is untimely. Later discovered information supporting protest allegation does not provide independent timely basis of protest or otherwise excuse failure to file protest timely under Bid Protest Regulations.

Birdsboro Corporation (Birdsboro) protests certain requirements under solicitation No. DACW85-84-R-0011, a two-step formally advertised procurement conducted by the United States Army Corps of Engineers (Corps) for hydroelectric equipment. The requirements allegedly preclude Birdsboro from participating in the procurement. We dismiss the protest as untimely.

The protest was filed (received) in our Office on January 31, 1985, after the closing date for receipt of initial proposals and after issuance of step two of the two-step procurement. The second step bid opening originally scheduled for January 31, 1985, has been postponed.

Birdsboro contends that it did not learn of its bases of protest regarding the specifications until at least January 24, 1985. In this connection, Birdsboro asserts that by December 21, 1984, as a result of congressional inquiries to the Department of Defense (DOD) on its behalf, it first became aware that the solicitation permitted use of imported castings contrary to stated DOD policy that castings be procured domestically. By letter dated December 21, also after receipt of initial technical proposals, Birdsboro requested that the Corps amend the solicitation to require only domestic castings in accordance with DOD policy.

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Birdsboro states that on January 24, it met with representatives of the DOD Office of Inspector General. At that time, Birdsboro states it first learned of the findings of an Office of Inspector General audit report issued on November 11, 1984, which was concurred in by the DOD Office of the Under Secretary of Defense for Research and Engineering. The report contained a finding that the specifications were restrictive. Also, Birdsboro was advised that the Under Secretary had determined that these restrictions were not to be used again. Birdsboro asserts that on January 29, it discovered that the Office of the Inspector General had advised the Corps to cancel the subject solicitation. Birdsboro also asserts that it was at this time that it learned that the Corps did not intend to amend the solicitation to require domestic castings. Birdsboro determined that, based on this information, it had sufficient grounds to protest the solicitation, and filed a protest with our Office on January 31, 1985.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), 49 Fed. Reg. 49,417, 49,420 (1984) (to be codified at 4 C.F.R. § 21.2(a)(1)), require that protests based upon alleged solicitation improprieties which are apparent prior to the closing date for receipt of initial proposals (here the closing date of the step one request for technical proposals issued as part of a two-step procurement) must be filed with either the contracting agency or our Office prior to the closing date for receipt of technical proposals.

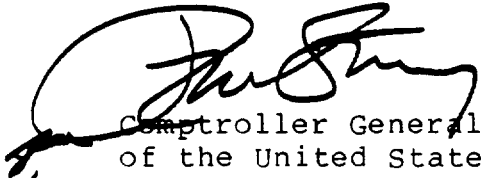
Birdsboro was on notice of its basis of protest, the allegedly restrictive specifications and the failure to require castings to be of domestic origin, from the face of the step one solicitation, and, as noted above, under our Bid Protest Regulations was required to protest the step one solicitation improprieties before the closing date for receipt of initial proposals. Consequently, Birdsboro's protest concerning the allegedly defective specifications is untimely and will not be considered. Foley Company, B-212378.7, Feb. 13, 1984, 84-1 C.P.D. ¶ 178.

While the release of the DOD investigation results and information concerning DOD policy may have precipitated Birdsboro's protest, the release of this information does not provide a new timely basis of protest or otherwise excuse Birdsboro from our timeliness rules. The fact remains that the solicitation provisions to which Birdsboro objects were apparent from the solicitation and Birdsboro did not protest these provisions before the initial closing date for receipt of proposals.

Birdsboro specifically requests that we apply the "significant issue" exception to its untimely protest. This exception provides that an untimely protest may be considered if it raises a question of significant interest to the procurement community. 4 C.F.R. § 21.2(c), 49 Fed. Reg. 49,417, 49,420 (1984) (to be codified at 4 C.F.R. § 21.2(c)). Birdsboro contends that the Inspector General's findings and his recommendation that the procurement be canceled indicate that this protest raises issues significant to the procurement system.

In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a matter of widespread interest or importance to the procurement community, see e.g. Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 C.P.D. ¶ 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 C.P.D. ¶ 225; Garrison Construction Company, Inc., B-190959, Feb. 26, 1980, 80-1 C.P.D. ¶ 159; Wyatt Lumber Company, B-196705, Feb. 7, 1980, 80-1 C.P.D. ¶ 108.

The issue of an agency's determination of its minimum needs has been the subject of previous GAO decisions. Swintec Corporation--Reconsideration, B-212395.8, Aug. 13, 1984, 84-2 C.P.D. ¶ 161; Potomac Industrial Trucks, Inc., B-204648, Jan. 27, 1982, 82-1 C.P.D. ¶ 61. In this connection, we have explained that the "significant issue" exception is not applicable to protests, such as the one in the present case, charging that the solicitation precludes participation in a procurement. Swintec Corporation--Reconsideration, B-212395.8, supra.


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of the United States