



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ATD-American Co.

File: B-224539

Date: October 20, 1986

DIGEST

1. Protest challenging rejection of protester's bid as nonresponsive is untimely where filed more than 10 days after contracting agency notified protester that its bid had been rejected for failure to comply with specifications in invitation for bids.
2. Protest challenging specifications in invitation for bids is untimely where not filed before bid opening.
3. Protester's contention that awardee will not furnish products conforming to specifications in invitation for bids concerns a matter of contract administration which is not reviewed by General Accounting Office as part of its bid protest function.

DECISION

ATD-American Co. protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. F28609-86-B-0017, issued by the Air Force for bath mats, hand towels, washcloths and bath towels. We dismiss the protest.

According to the protester, five bids were received by bid opening on May 30, 1986. Four of the five bids, including the protester's, were rejected as nonresponsive for failure to conform to the specifications in the IFB. The awardee, Ronnie Marlene Textiles, submitted the only responsive bid and was the highest priced bidder. The protester submitted the fourth highest price.

The protester concedes that its bid indicated a different size for one item called for in the IFB (20" x 34" instead of 22" x 34") and specified the color of the products to be provided as "champagne" instead of "vanilla", as required in the IFB. The protester states that its bid was based on recent

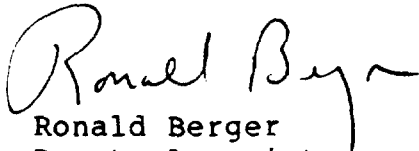
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changes in size and color by the manufacturer of the products the protester planned to provide. The protester contends that while the awardee's bid on its face complied with all the specifications in the IFB, the awardee plans to furnish the same products as those on which the protester based its bid, which do not conform to the size and color specifications in the IFB. The protester argues that since it offered the same products as the awardee plans to provide, award instead should have been made to the protester as the lower priced bidder.

The protester's challenge to the rejection of its bid as nonresponsive is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), protests such as this one must be filed within 10 days after the protester knew or should have known the basis of protest. Here, the record shows that the Air Force advised the protester that its bid had been rejected in a letter dated July 15, which was received by the protester by July 21; however, the protest was not filed until October 8, considerably more than 10 days later. In any event, the protest would appear to be without merit on this ground since the protester admits it did not offer products conforming to the IFB specifications. See Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49. To the extent the protester may be challenging the specifications themselves, the protest also is untimely, since protests based upon alleged improprieties apparent on the face of the solicitation must be filed before bid opening. 4 C.F.R. § 21.2(a)(1); Validyne Engineering Sales Corp., B-218369, Apr. 3, 1985, 85-1 CPD ¶ 387.

Finally, the protester's contention that the awardee will not furnish products conforming to the specifications concerns a matter of contract administration which we will not review under our bid protest function. 4 C.F.R. § 21.3(f)(1); Nicolet Biomedical Instruments, B-219234, Aug. 28, 1985, 85-2 CPD ¶ 239.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel