



The Comptroller General
of the United States

Washington, D.C. 20548

Cooper

Decision

Matter of: Portec--Request for Reconsideration

File: B-224537.2

Date: October 27, 1986

DIGEST

Requirement that protest against restrictive specifications in a solicitation be filed prior to bid opening, where the defect is apparent from the face of the solicitation, is not a mere technicality preventing the government from acquiring competition, but is an important part of the process established to insure an orderly, equitable and prompt resolution of protests. Requirement permits review of matter and effective remedial action, if warranted, when most practicable, i.e., before bid opening.

DECISION

Portec requests reconsideration of our October 9, 1986, dismissal of the firm's protest that the specifications for invitation for bids (IFB) No. DAHC21-86-B-0010, issued by the Department of the Army for tank chain assemblies, were unduly restrictive of competition. We dismissed the protest because, as provided in our Bid Protest Regulations, a protest filed after bid opening that is based on alleged improprieties in an IFB that were apparent from the face of the solicitation is untimely. See 4 C.F.R. § 21.2(a)(1) (1986). Portec requests that we reconsider on the ground that our timeliness regulation is a technicality preventing the government from getting competitive pricing, since Portec is the low bidder and, the firm contends, its chain assemblies will perform properly even though they do not meet the exact dimensions required in the IFB.

Our timeliness rules are an important part of the process established in our Bid Protest Regulations to insure the orderly, equitable and prompt resolution of protests. B & B Boat Building Inc.--Reconsideration, B-220852.4, Jan. 22, 1986, 86-1 C.P.D. ¶ 69. The purpose of the requirement that a protest based upon alleged improprieties apparent from the face of an IFB be filed before bid opening is to enable our Office (or the contracting agency, if the protest is filed there) to review the matter and take effective action if

warranted--for example, by recommending that the solicitation be amended--when most practicable. See Abbott Products, Inc.--Reconsideration, B-221560.2, Feb. 10, 1986, 86-1 C.P.D. ¶ 144.

Portec's protest submission shows that the Army rejected the firm's bid as nonresponsive because it did not meet the specifications for chain assembly dimensions. In this respect, to be responsive, a bid as submitted must represent an unequivocal offer to perform the exact thing called for in the solicitation such that the acceptance of the bid will bind the contractor to meet the solicitation's material terms and conditions. Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 C.P.D. ¶ 49. A bid that is not responsive must be rejected, Validyne Engineering Sales Corp., B-218369, Apr. 3, 1985, 85-1 C.P.D. ¶ 387, and our Regulations do not contemplate a firm being able to use the rejection of a bid on that basis as a vehicle to pose an otherwise untimely challenge to the specification on which the rejection was based.

Our prior dismissal is affirmed.

for Seymour E. Fiv...
Harry R. Van Cleve
General Counsel