

Woods



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Hi-Tech  
File: B-225855  
Date: February 18, 1987

### DIGEST

Protest that the solicitation provision concerning the shipping rate to be used in evaluating bids was incorrect is dismissed as untimely since the protester did not protest this alleged solicitation impropriety until after bid opening.

### DECISION

Hi-Tech protests the award by the Panama Canal Commission of a contract to L & M Mercadeo International, S.A. under invitation for bids (IFB) No. 666,110-03. We dismiss the protest as untimely.

The solicitation was for 120,000 linear feet of used railroad rails. The solicitation required bidders to specify either of two delivery terms: (1) F.O.B. Destination New Orleans, Louisiana, with payment for shipping the rails to Panama then being the responsibility of the government, or (2) C.I.F. Destination Gamboa or Cristobal, Panama, meaning that the bid price included cost, insurance and freight. For evaluation purposes, the IFB provided that bids offering these different delivery terms would be compared by adding the cost of ocean freight to the F.O.B. New Orleans bids. According to the solicitation, the cost of freight would be calculated at "\$155.00 per measurement ton of 40 cubic feet." Therefore, F.O.B. New Orleans bidders were required to furnish total cubic measurements for the rails.

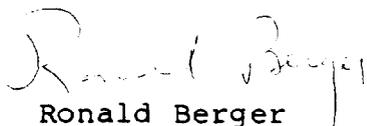
The agency opened bids as scheduled on September 29, 1986. The protester submitted a bid of \$331,200 based on C.I.F. Gamboa, Panama. Mercadeo bid on the basis of F.O.B. New Orleans. After an evaluation based on \$155 per measurement ton, Mercadeo's total evaluated bid price was \$314,520. The agency therefore awarded a contract to Mercadeo on September 30.

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By letter dated October 2, the protester informed the agency that it should have been evaluated as the low bidder. The protester contended that the evaluation factor added to Mercadeo's bid should have been based on \$155 per weight ton (not per measurement ton) because that is the rate registered by the government's carrier with the Federal Maritime Commission. If the added freight charge had been based on weight tons rather than measurement tons, the protester's evaluated price would have been lower than the awardee's.

The agency denied the protest by letter of November 19 on the basis that the \$155 per-measurement-ton freight charge was in fact the rate charged the government by its carrier (\$155 per weight ton being the rate the carrier charges to the public) and that any objections to the use of this rate for evaluation purposes should have been raised prior to bid opening. Hi-Tech filed a protest with this Office on the same issue within 10 working days after it received the agency's letter of November 19. The protester contends that the solicitation contained a latent defect.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1986). Here, the agency's intent to add an evaluation factor to F.O.B. New Orleans bids based on a shipping rate of \$155 per-measurement-ton could not have been more apparent: it was clearly stated in the solicitation. Even if the rate stated in the solicitation was incorrect--and we have no basis to conclude that it was--the alleged impropriety was anything but latent. The protester did not raise this issue either with the agency or this Office until after bid opening. We therefore dismiss the protest as untimely. See Charta, Inc., B-224287, Sept. 22, 1986, 86-2 CPD ¶ 330.

  
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