



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Applied Controls Co., Inc.--Request for
Reconsideration
File: B-228568.2
Date: November 30, 1987

DIGEST

1. A protest to the General Accounting Office (GAO) alleging an impropriety that was apparent on the face of an invitation for bids that is not filed until after bid opening is untimely.
2. Submission and acceptance of a below-cost bid are not legally objectionable. Whether a bidder can meet contract requirements in light of its low bid concerns the contracting agency's affirmative responsibility determination which GAO generally does not review.

DECISION

Applied Controls Company, Inc. (ACC) requests reconsideration of our dismissal of its protest concerning invitation for bids (IFB) No. N00104-87-B-0105 issued by the Navy for power supplies. We affirm the dismissal of the protest as untimely.

In its protest, ACC alleged that the specification package provided with the IFB was not adequate for accurate manufacturing by a contractor who had not previously built the product requested. While bid opening took place on September 16, 1987, ACC did not file its protest with our Office until October 20.

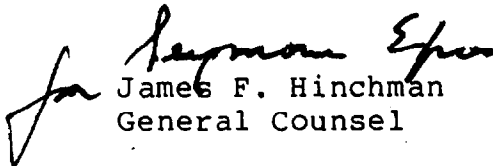
ACC correctly characterizes its protest as one based on "solicitation defects." Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1987). The purpose behind this requirement is to allow the contracting agency or our Office to decide a protest issue while it is most practicable to take effective action if warranted. For example, a protest like ACC's challenging

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allegedly defective specifications, if filed before bid opening, would allow the IFB to be amended without undue disruption to the procurement, if the protest were found to have merit. Ratcliffe Corp.--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395. Here, ACC defeated that purpose by not filing its protest until October 20, well after bid opening on September 16. Consequently, the protest properly was dismissed as untimely. Portec--Request for Reconsideration, B-224537.2, Oct. 27, 1986, 86-2 CPD ¶ 480.

In its request for reconsideration, ACC also maintains that the low bidder under the IFB submitted a below-cost bid. There is no legal basis on which to object to the submission or acceptance of a below-cost bid. Hercules Painting, B-223647, July 31, 1986, 86-2 CPD ¶ 131. To the extent that ACC challenges the low bidder's ability to perform at its bid price, the protest concerns the contracting agency's affirmative responsibility determination, a matter which we will review only in limited circumstances not alleged or evident here. 4 C.F.R. § 21.3(f)(5).

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel