



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Hi Chem Diagnostics

**File:** B-238838

**Date:** May 22, 1990

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Pam Beckman, for the protester.  
Robert C. MacKichan, Jr., Esq., Office of the General Counsel, General Services Administration, for the agency.  
David Hasfurther, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that contracts awarded under the terms contained in a solicitation will unfairly deprive protester of orders under its own Federal Supply Schedule contract is untimely where it was not filed prior to the time set for the receipt of offers under the solicitation.
2. Protester who did not submit an offer under a solicitation and argues that it could not do so is not an interested party to complain about an awardee's price submitted in response to the solicitation.

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### DECISION

Hi Chem Diagnostics protests the award of a contract to Beckman Instruments, Inc., under General Services Administration (GSA) solicitation No. FCGS-X1-38013-N. The solicitation called for offers for inclusion on a multiple award Federal Supply Schedule (FSS) for the rental and maintenance on a "cost per test" (CPT) basis of clinical laboratory analyzers (Federal Supply Class (FSC) Group 66, Part III)) for the purpose of conducting various tests, as well as for all supplies and consumables required to conduct the tests and for personnel training. Hi Chem basically contends that the award of this type of FSS contract to Beckman will unfairly eliminate it as a supplier of chemicals and supplies for these tests because the new FSS arrangement includes the supplies and equipment in a single package. Hi Chem currently holds an FSS contract for the supplies.

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We dismiss the protest.

GSA published in the October 3, 1988, Commerce Business Daily (CBD) a notice of its intention to establish a new schedule for obtaining FSC Group 66 laboratory equipment (along with maintenance and all necessary supplies) on a CPT basis. It issued a solicitation on March 13, 1989, with an amended closing date of July 11, and with a synopsis in the March 14 CBD. Hi Chem did not submit an offer. Beckman was placed on the FSS on January 3, 1990; by March 1990, eight firms had been placed on the FSS.

Hi Chem first complained about the impact of the FSS contract award to Beckman by letter dated February 2 to the agency. Hi Chem filed its protest with our Office on March 7. We think this protest, which is in essence a complaint about the impact of the terms of the FSS solicitation upon Hi Chem's business, was untimely filed.

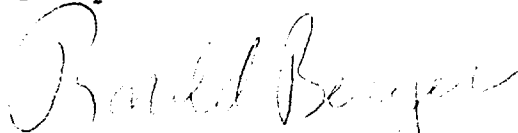
Hi Chem's complaint is that the CPT scheme set up by the solicitation combining the test instruments and the supplies in a single package rental arrangement will cause it to lose business to the awardees and will result in higher test costs to the government. According to the protester, it could not compete under the solicitation because it does not supply test instruments. Thus, Hi Chem's complaint clearly involves what it sees as an inappropriate procurement approach as evidenced by the terms of the RFP. Under our Bid Protest Regulations, protests based on alleged improprieties apparent on the face of a solicitation must be filed with either the agency or our Office prior to the time set for receipt of offers. 4 C.F.R. § 21.2(a)(1) (1989). Hi Chem therefore should have complained before the time set for receipt of offers on July 11, 1989. Since it did not protest until well after that time, to the extent Hi Chem complains about the nature of the CPT arrangement the protest is untimely and will not be considered.

The protester also questions how the agency could have determined that Beckman offered its best price under the solicitation. Since the protester did not submit an offer under the solicitation and in fact maintains that it could not do so, it is not an interested party entitled under our Regulations to raise such an argument. 4 C.F.R. § 21.0(a) Valentec Kisco, Inc., B-238359, May 11, 1990, 90-1 CPD ¶ \_\_\_\_\_.

Finally, Hi Chem requests that we investigate the matters raised regarding this procurement. Our Office does not conduct investigations as part of our bid protest function.

MIDDCO, Inc.--Request for Reconsideration, B-235587.2,  
Oct. 31, 1989, 89-2 CPD ¶ 402.

The protest is dismissed.



Ronald Berger  
Associate General Counsel