

DECISION



DIGEST - L - Cont
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

80-1 CPD 270

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FILE: B-196414

DATE: April 17, 1980

MATTER OF: Acadian Airmotive, Inc.

DIGEST:

1. Customs' issuance of contract modification--which insured that in limited circumstances certain critically needed parts would be delivered expeditiously--is matter of contract administration and responsibility of contracting agency, not for resolution by GAO unless, unlike here, modification is beyond scope of contract.
2. Contentions--(1) that solicitation restricted protester from bidding based on sliding scale discounts; (2) that solicitation made no provision for substitute parts; and (3) that solicitation required explanation but contracting officer did not make it clear--are untimely filed. GAO Bid Protest Procedures provide that protests based on alleged improprieties in solicitation, which are apparent prior to bid opening, must be filed prior to bid opening in order to be considered.

Acadian Airmotive, Inc. (Acadian), protests the award of a contract to Mercury Aviation Companies (Mercury) under solicitation No. CS-N0-80-6 issued by the United States Customs Service, Department of the Treasury.

Acadian's bases of protest follow:

- (1) The solicitation and the contract that was awarded called for the contractor to prepay all freight but Customs amended the agreement so that the Government would pay all air freight costs on emergency orders.
- (2) The solicitation did not permit discounts based on a sliding scale geared to certain dealers price codes, but required a single discount applicable to all parts.

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(3) The solicitation did not permit substitutions for a designated manufacturer's parts.

(4) The solicitation required explanation and the contracting officer did not adequately explain it during prebid telephone communications.

Regarding Acadian's first basis of protest, Customs reports that after contract award, the contracting officer determined that in instances when a Customs aircraft required for operational support is inoperative and awaiting parts, and when no substitute aircraft is available, Customs wanted the ability to designate the parts requirement as "AOG" (Aircraft on Ground) and to ship them air freight at Government expense. Customs also reports that the captioned contract was awarded on a single discount rate, in accordance with the solicitation, and the designation AOG was not contemplated at the time of contract award. The contract as amended, in Customs' view, does not alter the basis of award but facilitates expeditious parts delivery advantageous to Customs for AOG parts only.

A contract modification is a matter of contract administration which is primarily the function and responsibility of the contracting agency and is not ordinarily for resolution under our bid protest function unless the modification is beyond the scope of the contract. Symbolic Displays, Incorporated, B-182847, May 6, 1975, 75-1 CPD 278. Here it is not alleged and it is not evident that the modification could be beyond the scope of the contract. In essence, the modification insured that in limited circumstances when Customs urgently needed a certain part, it was willing to pay for expeditious delivery. Accordingly, this portion of the protest is dismissed.

Regarding Acadian's second allegation, Customs reports that the contracting officer was fully aware that varying discounts were available. However, a determination was made after consultation with Customs

applicable to all Cessna parts was in Customs' best interest; therefore, the invitation for bids solicited a single discount.

The third allegation seems, in Customs' view, to address Customs' failure to permit substitution of parts as had been the protester's practice in filling past orders; however, Customs reports that it requires only Cessna parts.

With regard to the fourth allegation, Customs reports that the protester clearly ignored information and guidance furnished in the solicitation and over the telephone.

Pursuant to our Bid Protest Procedures, protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be considered timely. 4 C.F.R. § 20(b)(1)(X)(1980). Therefore, since Acadian's second, third, and fourth allegations relate to solicitation improprieties, but were not filed until after bid opening, they are untimely and will not be considered. AnaMed Hawaii, B-196438, October 30, 1979, 80-1 CPD 1.

Accordingly, these aspects of the protest are also dismissed.

Warren R. Van Cleve

for Milton J. Socolar
General Counsel