

DOCUMENT RESUME

03872 - [A2774000]

[Alleged Impropriety in Invitation for Bids]. P-190056.
September 28, 1977. 1 pp.

Decision re: Hammer Security Service of California; by Milton Socolar (for Paul G. Deabling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law J.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Army: Fort Ord, CA.
Authority: 4 C.F.R. 20.2(b)(1).

The protester alleged that an invitation for bids was defective since it did not contain specific man-loading figures and contained a liability and hold-harmless clause. The protest was untimely since it was not filed prior to bid opening.
(Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: 3-190056

DATE: September 28, 1977

MATTER OF: Hammer Security Service of California Inc.

DIGEST:

Protest against alleged impropriety in IFB not filed prior to bid opening is untimely and not for consideration on merits.

Hammer Security Service of California Inc (Hammer) has protested against the award of a contract under invitation for bids (IFB) No. DAKFO3-77-B-0067, issued by the Department of the Army, Fort Ord, California.

The basis of Hammer's protest is that the IFB was defective in that it did not contain specific man-loading figures and contained a liability and hold-harmless clause. By letter dated August 2, 1977, Hammer requested clarification and additional information. The contracting officer advised Hammer in a letter received August 19, 1977, that the request was submitted too close to bid opening to allow the clarification to be sent to all bidders. Bids were opened at 3:30 p.m. on August 22, 1977. Hammer protested to the Army by mailgram dated August 22, 1977, which was received at Western Union, Fort Ord, at 4:01 p.m. and delivered to the procurement office at 4:19 p.m. A protest was filed (received) with this Office on September 6, 1977.

The proper time to protest a defective solicitation provision under our bid protest procedures is prior to bid opening. 4 C.F.R. § 20.2(b)(1) (1977). A timely protest of such a solicitation provision gives the procuring agency the opportunity to correct the solicitation by issuing amendments before bids are opened and prices revealed. Since Hammer's letter of August 2 (prior to bid opening) was not a protest but rather a request for clarification, and no protest was filed with either our Office or the procuring agency until after bid opening, it is untimely and will not be considered on the merits.

for Milton J. Dembling
for Paul G. Dembling
General Counsel