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DECISION



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

FILE: B-190752

DATE: January 31, 1978

MATTER OF: Lamson Division--reconsideration

DIGEST:

Representatives of protester were allegedly advised by engineer at contracting activity that protester could bid 6-inch pneumatic tube system with 4-inch alternate system even though IFB specification required 5-1/2-inch system. Reliance on such advice was unreasonable, since award of contract pursuant to advertising statutes must be made upon same specifications that were offered to all bidders and instructions to bidders state that oral explanations or instructions provided to bidders are not binding. Therefore, protest after bid opening against allegedly restrictive specification is untimely and not for consideration.

Lamson Division (Lamson) requests reconsideration of our decision in Lamson Division, B-190752, December 14, 1977, in which we held untimely Lamson's protest against the allegedly restrictive nature of a specification calling for a 5-1/2-inch O.D. pneumatic tube system under invitation for bids (IFB) No. DAAG-36-77-B-0047 issued by the New Cumberland Army Depot.


Lamson argued in its initial protest that the specification was unduly restrictive since only one domestic manufacturer offered a 5-1/2-inch pneumatic tube system. Lamson alleged that any other domestic manufacturer regularly engaged in the manufacture, sale and installation of pneumatic tube systems would be required to offer a more expensive 6-inch system. The bid opening took place on October 18, 1977, and award was made on November 2, 1977. Lamson's letter of protest, dated November 18, 1977, was received by our Office on November 21, 1977. We held that the protest was untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), since a protest based upon an alleged impropriety in a solicitation must be filed prior to bid opening in order to be considered by our Office.

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In its request for reconsideration, Lamson states that it did not protest the allegedly restrictive IFB specification earlier because its representatives had made a site visit prior to bidding and, at that time, an engineer at the New Cumberland Army Depot advised them that he was not aware of the "proprietary nature" of the specification and indicated that Lamson could bid its 6-inch system with a 4-inch alternate.

It is well established that the award of a contract pursuant to the advertising statutes must be made upon the same specifications that were offered to all bidders. See 37 Comp. Gen. 524, 527 (1958). Further, instructions to bidders state that oral explanations or instructions provided to bidders are not binding. Standard Form 22 (Construction Contract) paragraph 1 and Standard Form 33A (Supply Contract) paragraph 3. Therefore, we do not consider reasonable Lamson's reliance on the engineer's advice to the effect that Lamson could properly bid on a basis other than that prescribed in the IFB. It follows that we cannot accept Lamson's implication that the engineer, by giving such advice, could in effect extend the time period for Lamson to timely protest the allegedly restrictive specification under our Bid Protest Procedures. Since the subject restriction was never formally removed from the IFB, it was incumbent upon Lamson to protest its inclusion in the specifications prior to bid opening. Moreover, even if we were to consider Lamson's inquiry addressed to the engineer about the specification as a protest to the contracting agency, the protest to our Office more than 10 working days after the initial adverse agency action, i.e., the opening of bids without removing the restriction from the specifications, renders the subsequent protest untimely under section 20.2(a) of our Bid Protest Procedures. See Kinetic Systems, Inc.--reconsideration, B-189146, August 17, 1977, 77-2 CPD 126.

Accordingly, our decision in Lamson Division, supra, is affirmed.


Deputy Comptroller General
of the United States