DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

FILE: B-194213

DATE: April 2, 1979

MATTER OF: Lewis Corporation

DIGEST:

legation that IFB Contained Restrictive and Acquirements)

fotest based on alleged patent solicitation

AO Bid Protest Protest based on alleged patent solicitation defects is untimely when filed with bid, since GAO Bid Protest Procedures require that such protests be filed prior to date for bid opening.

Protest is summarily dismissed where protester's initial submission demonstrates affirmatively that protest is untimely.

The Lewis Corporation (Lewis) has protested invitation for bids (IFB) MOOO27-79-B-0008 issued by the United States Marine Corps (Marine Corps). Lewis alleges that the IFB contains restrictive and unreasonable requirements.

The bid opening date was February 26, 1979, and Lewis included a letter of protest to the Marine Corps in its bid package. Lewis' protest to our Office was received February 27.

· We believe the protest may be dismissed on the basis of the protester's initial submission and without further development pursuant to our protest procedures, 4 C.F.R. Part 20,et seq. (1978), because the documents submitted and read in the light most favorable to the protester affirmatively demonstrate that the protest is untimely. Murphy Anderson Visual Concepts - Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79.

Section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978), requires that protests based on alleged patent solicitation defects, such as restrictive specifications, be filed prior to bid opening. Additionally, section 20.2(a) of our Procedures, 4 C.F.R. § 20.2(a) (1978), provides that we will consider a protest filed initially with a contracting agency only if that protest was timely filed with the agency. Therefore, in

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order for Lewis' protest to be timely it must have been filed with GAO or the Marine Corps prior to the bid opening on February 26, 1979.

We have consistently held that incorporation of a protest into a bid package submitted in response to a formally advertised procurement, as here, results in no more than the assertion of the protest at bid opening, rather than prior thereto as required by our Procedures. American Can Company - Reconsideration, B-186974, August 19, 1976, 76-2 CPD 178; Emerson Electric Co., B-184346, September 9, 1975, 75-2 CPD 141. Therefore, Lewis' protest to the Marine Corps was untimely. Likewise, the Lewis protest filed here after bid opening was untimely.

Accordingly, the protest is dismissed.

Milton J. Socolar General Counsel

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