

DECISION



12452 Boyle
Proc. I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-196954

DATE: January 8, 1980

MATTER OF: Clarke & Lewis, Inc.

D3563

DIGEST:

[Review of Alleged Solicitation Defects]

Protest against alleged solicitation defects--
(1) time permitted to prepare and mail proposal was inadequate, and (2) specifications pointed to one firm--filed after closing date for receipt of initial proposals is untimely under GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1979), and will not be considered on merits.

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Clarke & Lewis, Inc., protest any award under request for proposals (RFP) No. N00102-80-R-0062 issued by the Supply Department, Portsmouth Naval Shipyard, for a bending machine. Notice of the procurement appeared in the Commerce Business Daily on October 26, 1979, and that day the protester requested a copy of the complete solicitation from the procuring activity, which it received on November 13, 1979--2 days before the closing date for receipt of initial proposals. 18

The protester states that upon reviewing the specifications it concluded that (1) the time to prepare proposals was less than 30 days and inadequate for a proper response or mailing, and (2) the specifications were pointed to one company. The protester believed that the procuring activity's specifications could be construed as a deliberate effort to eliminate the protester as a potential vendor.

The day after the closing date the protester wrote to the procuring activity requesting an extension of the closing date. In response, the contracting officer denied the request and reported that 10 responses were received including one from a California firm which had obtained notice of the procurement from the Commerce Business Daily. The contracting officer

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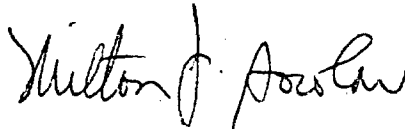
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concluded that since the item was urgently required and there was adequate competition, the closing date would not be extended. Thereafter, the protester filed its protest here.

A protest based on alleged solicitation improprieties, as here, must be filed either with the procuring agency or here prior to the closing date for receipt of initial proposals in order to be timely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1979). In two cases, however, where the basis of protest was first discovered: (1) less than 3 hours prior to bid opening due to last minute receipt of an amendment, Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149, and (2) "moments" prior to the time oral quotes were due because the solicitation was oral, Ampex Corporation, B-190529, March 16, 1978, 78-1 CPD 212, we concluded that the circumstances compelled a finding of timeliness.

The instant situation is unlike those, however, and closer to the one in Irvin Industries, Inc., B-187849, March 28, 1977, 77-1 CPD 217. There, the protester received the solicitation 2 days before the closing date and we held that a protest against an alleged solicitation impropriety was untimely because it was not filed prior to the closing date.

Accordingly, the protest is untimely and will not be considered on the merits.



Milton J. Socolar
General Counsel