

DECISION



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

FILE: B-210668

DATE: February 25, 1983

MATTER OF: Export Trade Corporation

DIGEST:

1. In order to be considered filed within a reasonable time, complaints based on alleged improprieties in a grantee's solicitation which are apparent prior to bid opening must be filed in accordance with time standards established for bid protests in direct procurements. 4 C.F.R. § 21.2(b)(1) (1982).
2. Complaint alleging defects which are apparent on the face of a solicitation filed with the bid is not timely under our Bid Protest Procedures since it was not filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1982).

The Export Trade Corporation (ETC) complains against the award of a contract for water well drilling equipment for Somalia under invitation for bids (IFB) No. 649/005. This procurement was financed under an Agency for International Development (AID) grant, and this Office will review complaints concerning award of contracts under AID grants. See Peerless Pump Company, B-198180, August 19, 1980, 80-2 CPD 134. The procurement was conducted by the American Export Group International Services Development Corporation (AEGIS), as purchasing agent for Somalia.

ETC complains that the IFB improperly restricted competition solely to Ingersoll-Rand products. ETC also argues that the procurement of the items solicited should have been divided into smaller procurements, which would have resulted in lower prices and savings which AID should want to encourage.

ETC apparently timely submitted a bid dated October 20, 1982. Bid opening was October 29, 1982. In its bid, ETC offered Rockmaster, Inc., hammer bits, instead of those manufactured by Ingersoll-Rand which were required under the IFB. ETC stated in the bid that it did not understand why the specification was limited to Ingersoll-Rand. Also, it sent a letter to AID dated October 25, 1982, and one to

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AEGIS dated November 18, 1982, apparently protesting the restrictive specification, and arguing that the dividing of the requirements into smaller units would have led to lower prices and savings.

By letter dated November 30, 1982, AEGIS advised ETC that Ingersoll-Rand submitted the low responsive bid. Since ETC's bid had been lower, ETC concluded that it had been determined nonresponsive because it bid Rockmaster hammer bits instead of Ingersoll-Rand bits.

In Caravelle Industries, Inc., 60 Comp. Gen. 414 (1981), 81-1 CPD 317, we stated that while it might not always be appropriate to establish strict time limits for filing grant complaints, they must be filed within a "reasonable" time so that we can decide an issue while it is still practicable to recommend corrective action if warranted. We added that in most instances, the only "reasonable" time for filing complaints in which solicitation deficiencies were alleged would be the time required by our Bid Protest Procedures for direct Federal procurements, i.e., before bid opening or the time for receipt of proposals. Therefore, in order to be considered filed within a reasonable time, a complaint based on improprieties which are apparent on the face of a solicitation, must be filed before bid opening. We also have stated that a protest to the agency, filed with a bid will not be considered timely. See Precision Dynamics Corporation, B-207823, July 9, 1982, 82-2 CPD 35. Therefore, if we consider ETC's statement submitted in its bid as a complaint (against restrictive specifications), the complaint to the agency was untimely filed, and ETC's subsequent complaint filed with our Office approximately 3 months after bid opening, is not timely. Cf. Brumm Construction Company, B-201613, October 6, 1981, 81-2 CPD 280.

We dismiss the complaint.

J. H. Barclay Jr.
For Harry R. Van Cleave
Acting General Counsel