

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

Crowley
Proc 7
GAO 00046
8644

FILE: B-192297

DATE: December 19, 1978

MATTER OF: A & J Manufacturing Company

DIGEST:

[Untimely] Protest of amendment to solicitation which added competitor's product to item description] is untimely raised under GAO Bid Protest Procedures, since protest was not filed prior to closing date for "best and final" offers.

AGC 00051
A & J Manufacturing Company (A & J) protests the award of a contract to General Kinetics Incorporated (GKI) for 17 electronic equipment racks by the Defense General Supply Center (DGSC), Richmond, Virginia, under request for proposals (RFP) DLA400-78-R2457, issued May 17, 1978. The protest was received by this Office on August 24, 1978. A & J contends that equipment racks to be supplied by GKI do not meet the RFP specifications and questions whether the specifications were changed "to allow GKI racks to become technically acceptable." In this respect, A & J questions, among other things, whether the GKI racks meet the specified shock and vibration requirements, or the weight limitations imposed in the specification. *DLG 00400* *CNG 00681*

The RFP did not require a technical proposal and as issued included equipment specifications which were based in part on undisclosed A & J data. The GKI proposal offered to provide equipment racks which met the specifications, and included data and drawings to support that contention.

On August 14, 1978, the requiring activity determined that GKI's proposed equipment was "technically acceptable" and on August 15, 1978, the RFP was amended to include GKI racks in the "item description." The closing date for receipt of "best and final" offers

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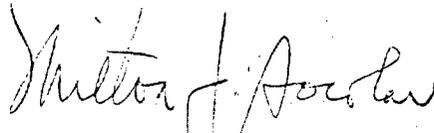
was set for August 21, 1978. A & J submitted its best and final offer without comment on the changed specification. Thereafter, the contracting officer accepted GKI's low offer and on August 22, 1978 notified it of the award.

GAO Bid Protest Procedures, 4 C.F.R. 20.2(b)(1)(1978), provide in pertinent part that:

"In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation." (Emphasis added.)

The protest questions the amendment to the RFP which added GKI racks to the item description (the "changed" specifications), and thus concerns an alleged impropriety in the solicitation which was apparent prior to the "next closing date for the receipt of proposals." In our view, the protest is untimely and not for consideration on the merits, as it was filed after the date set for receipt of best and final offers. See, e.g., Nuclear Research Corporation, B-189790, February 22, 1978, 78-1 CPD 147.

The protest is dismissed.



Milton J. Socolar
General Counsel