

DECISION

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

FILE: B-214022**DATE:** March 5, 1984**MATTER OF:** Universal Alarm Services**DIGEST:**

1. Protest against award of a contract to another firm filed 22 days after bid opening is untimely since the basis for the protest was an alleged solicitation impropriety which should have been filed prior to bid opening and the second basis was known by bid opening.
2. Government is not required to equalize competition by considering competitor's advantage according to bidder by reason of incumbency absent unfair government action or preference.

Universal Alarm Services (Universal) protests the award of a contract to any other firm under solicitation No. F41800-83-B-0425-00001 issued by Kelly Air Force Base, Texas, for burglar alarm systems. We dismiss in part and deny in part the protest.

The record indicates that bids were opened on November 28, 1983. On December 29, 1983, our Office received a communication from Universal protesting the award; however, no basis for the protest was given. By letter dated January 13, 1983, received by our Office on January 23, 1983, details of the protest were furnished. Universal contends that the incumbent contractor was allowed to upgrade its present system and that the upgraded equipment conforms to the equipment procured under the above solicitation. Universal argues that the solicitation was misleading in that it appeared to request new equipment, other than that which was already installed. Also, Universal contends that since the current contractor was paid over \$70,000 to upgrade its system, it was able to bid "no charge" for installation, thus, submitting a lower bid than Universal.

Our Bid Protest Procedures provide that protests of alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening.

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4 C.F.R. § 21.2(b)(1) (1983). See C.W. Girard, C.M., B-210135, January 10, 1983, 83-1 CPD 25. According to Universal, it knew prior to bid opening that the incumbent contractor's system had been upgraded and the type of equipment required. Therefore, that portion of Universal's protest relating to the solicitation being misleading is untimely since its basis was apparent prior to bid opening, but Universal's protest was not filed until after bid opening.

Concerning Universal's contention that because the incumbent contractor had received in excess of \$70,000 to upgrade its system, it (the incumbent contractor) was in a position to submit a lower bid than Universal, we deny this basis of protest. The fact that the current contractor was able to bid "no charge" for installation was by virtue of its incumbency. The contractor's competitive advantage was not the result of preference or unfair action by the government and, therefore, the government was not required to equalize the competition. Clifton Precision, Division of Litton Systems, Inc., B-207582, June 15, 1982, 82-1 CPD 590.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States