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DECISION

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

FILE: B-213433 **DATE:** April 6, 1984

MATTER OF: Triple A Shipyards

DIGEST:

1. Protester's allegation that government's offer to sell surplus federal property adjacent to protester's leased property interferes with protester's property rights is not a proper matter for consideration under GAO bid protest authority.

2. Protest alleging impropriety apparent in the solicitation received by contracting agency after bid opening is untimely and not for consideration on the merits under GAO Bid Protest Procedures. Fact that protest initially was sent to wrong agency does not toll GAO timeliness requirements.

3. A request for clarification cannot be substituted for the necessity of a formal protest.

4. Contracting agency's consideration on the merits of an untimely protest does not prevent GAO's dismissal of same protest.

Triple A Shipyards (Triple A) protests the sale of surplus federal property located at the Hunter's Point Naval Shipyard, San Francisco, California, under invitation for bids (IFB) No. GS-09-D(R)-83-46, issued by the General Services Administration (GSA).

We dismiss the protest.

The protester, an unsuccessful bidder, leases property adjacent to the surplus property from the Department of the Navy (Navy). Triple A contends that certain requirements in the IFB interfere with Triple A's use of its leased property.

Our consideration of bid protests is predicated on our statutory duty to pass upon the legality of the expenditure

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of public funds. 31 U.S.C. § 3526 (formerly 31 §§ 71, 74 (1976)). Under this authority, we consider whether a procuring agency has adhered to procurement policies which are prescribed by law and implementing regulations. Garland Bertram, B-191055, March 3, 1978, 78-1 CPD 167. Triple A has not alleged or shown that GSA's offer to sell the surplus property under the terms of the IFB is in violation of any statute or regulation governing government procurement and, therefore, the firm's complaint concerning the above matters is not for consideration under our bid protest authority. Garland Bertram, supra.

Triple A also protests GSA's issuance of an addendum to the IFB providing that utility hookups would be available on a road which the Navy controls. Triple A maintains that the Navy never agreed to allow use of these hookups and, therefore, bidders submitted prices for facilities which GSA had no right to offer in the solicitation.

Triple A's protest concerning this matter is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), require that protests concerning alleged improprieties in a solicitation which, as here, are apparent prior to bid opening must be received by the contracting agency or GAO prior to bid opening.

In this case, the record indicates that 3 days prior to the August 18, 1983, bid opening date, by letter of August 15, 1983, Triple A erroneously protested this matter to the Navy. The record further indicates that GSA, the contracting activity, did not receive a copy of the August 15 protest until after bid opening. Nevertheless, Triple A maintains the August 15 protest to the Navy and an August 17 mailgram to GSA requesting clarification as to the exact location of the utility hookups constitute a pre-bid-opening protest to GSA.

Triple A was required to protest the issuance of the addendum to GSA, the contracting agency. 4 C.F.R. § 21.2(a) (1983); 3M Business Products Sales, Inc., B-194399, August 13, 1979, 79-2 CPD 115. Since the protest was not received by GSA prior to bid opening, it is untimely and not for consideration on the merits. 4 C.F.R. § 21.2(b)(1), supra. Triple A's protest to the wrong agency does not toll these timeliness requirements. 3M Business Products Sales, Inc., supra.

Moreover, we do not consider Triple A's August 17, 1983, mailgram to GSA a protest. Triple A's mailgram merely requested "clarification of the addendum . . . as to [the] exact location" of the hookups and nowhere manifested an intention to protest. This Office consistently has held that a mere request for clarification does not constitute a formal protest. Southwestern Bell Telephone Company, B-200501, July 15, 1981, 81-2 CPD 35; Hewitt Contracting Company, B-183961, July 8, 1975, 75-2 CPD 21.

Finally, we note that GSA denied Triple A's untimely protest and advised the firm that it could appeal the denial to this Office. A contracting agency's consideration on the merits of a protest which is untimely under our Bid Protest Procedures does not preclude our later dismissal of the same protest filed with us. J.J. Broderick Company, B-204506, November 23, 1981, 81-2 CPD 419. Therefore, since Triple A's protest with GSA was untimely filed with GSA, its subsequent protest to this Office is dismissed.

Harry R. Van Cleve
Acting General Counsel