

DECISION

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

FILE: B-212666

DATE: May 22, 1984

MATTER OF: ADB-Alnaco, Inc.

DIGEST:

1. GAO, under its procedures for reviewing the propriety of procurements conducted by grantees, will consider a complaint from a potential subcontractor that specifications in a solicitation issued by a grantee unduly restricted competition.
2. In state procurement funded by federal grant, a complaint alleging deficiencies apparent on the face of a solicitation must be filed before bid opening. Where conflicting statements of the complainant and the grantor agency are the only evidence of alleged instructions that complainant should delay filing its complaint until after bid opening, the complainant has not met its burden of proving that such instructions were given. Accordingly, where complaint was filed after bid opening, it is untimely.

ADB-Alnaco, Inc. complains that the specifications for runway lights in a solicitation issued by the City of Kansas City, Missouri, for runway rehabilitation are unduly restrictive. We dismiss the complaint as untimely.

The solicitation sought a contractor to overlay the runway pavement and rehabilitate the in-pavement lighting at Kansas City International Airport. The project is being undertaken by the City of Kansas City, utilizing funds obtained under Airport Improvement Program grant No. 3-29-0040-01 awarded by the Federal Aviation Administration (FAA). The solicitation specified Crouse-Hinds lighting fixtures in a number of instances, and provided that equipment manufactured by other suppliers would be acceptable if the city engineer determined that all "fixture parts, cans and accessories are compatible and interchangeable with" the equipment specified. Alnaco contends that the specification is unduly restrictive because the

parts and accessories produced by manufacturers such as Alnaco are not interchangeable.

The FAA first argues that Alnaco is not entitled to seek review from our Office because it is only a potential supplier of materials to an electrical subcontractor and our Public Notice published at 40 Fed. Reg. 42406, announcing the conditions under which we would consider complaints of grantee procurement actions, refers to complaints filed by "prospective contractors." We have previously decided, however, that we would consider complaints by potential subcontractors against relevant specifications in the solicitation for the prime contract. Carolina Concrete Pipe Company, B-192361, March 4, 1981, 81-1 CPD ¶ 162.

We agree with FAA, however, that the complaint is untimely. The alleged deficiencies were apparent on the face of the solicitation. To be considered on the merits, a complaint alleging deficiencies on the face of a solicitation must be filed before bid opening or the time set for receipt of proposals, when corrective action is most practicable. Reliance Steel Products Company, B-206754, Jan. 24, 1983, 83-1 CPD ¶ 77. Alnaco's complaint was not filed with the FAA until July 5, 4 days after the July 1 bid opening.

Alnaco states, however, that it complained to certain named FAA employees about the restrictive nature of the specification prior to bid opening, and was instructed by them to quote prices on the project to the firms bidding on the prime contract and to file a formal complaint only after bid opening. Consequently, Alnaco believes that its complaint was timely filed.

The earliest documents in the file evidencing Alnaco's complaint is its letter of July 6, confirming its telephonic complaint of July 5. The FAA expressly denies that any such instructions were given by the named individuals or by any other FAA personnel connected with the project. We have carefully considered the entire record in this case. All we have on this point, however, are conflicting statements on the issue by the complainant and the grantor agency; there is no evidence which supports the complainant's allegation. Consequently, we must view Alnaco as not having met its burden of proving its allegation. See Willis Baldwin Music Center, B-211707, Aug. 23, 1983, 83-2 CPD ¶ 240.

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Under the circumstances, we dismiss the complaint as untimely.

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