

DOCUMENT RESUME

08135 - [CJ428551]

[Untimely Protest against Rejection of Proposal], B-193370.
December 5, 1978. 3 pp.

Decision re: The Map Corp.; by Milton J. Socolar, General
Counsel.

Contact: Office of the General Counsel: Procurement Law I.

Organization Concerned: Coast Guard.

Authority: 4 C.F.R. 20. 40 Fed. Reg. 17979. B-190726 (1978).

A company protested rejection of its proposal, alleging that reasons given by the agency for finding its proposal technically unacceptable were not valid. The protest was filed more than 10 days after the basis for protest was known and was, therefore, untimely. (RRS)

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DECISION



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

FILE: B-193370

DATE: December 5, 1978

MATTER OF: The Map Corporation

DIGEST:

Where protest is filed with agency more than 10 working days after protester knows of basis for protest and is subsequently filed with GAO more than 10 working days after protester learns of adverse agency action, protest is untimely under GAO Bid Protest Procedures and not for consideration on the merits.

The Map Corporation (Map) protests the rejection of its proposal under request for proposals (RFP) CG-827673-A, issued by the United States Coast Guard (Coast Guard), for the testing of fire fighting foam. Map alleges that the reasons given by the Coast Guard for finding its proposal to be technically unacceptable are not valid.

Map was advised by the contracting officer in a letter dated July 11, 1978 and apparently received July 17, 1978, that its proposal was technically unacceptable. Map, by letter dated August 10, 1978, expressed disagreement with the Coast Guard's position and requested information on appeal procedures. The Coast Guard informed Map by letter received September 8, 1978, that its view of Map's proposal had not changed. Map, in a letter dated October 10, 1978, informed the Coast Guard of its intent to protest and requested "the necessary forms." The contracting officer then advised Map to protest with this Office "within * * * 10 days after adverse action." Map's protest to this Office was filed on October 31, 1978.

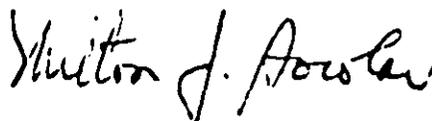
Our Bid Protest Procedures, 4 C.F.R. part 20 (1978), require in section 20.2(b)(2) that a protest be filed, either with the contracting agency or with this Office, not later than 10 working days after the basis for protest is known. They further provide, in section 20.2(a), that.

"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) * * *."

Map clearly met neither requirement. It apparently views as its "protest" the October 31, 1978, filing with this Office. Such a protest obviously cannot be regarded as filed within 10 days of when Map knew of grounds for protest. If we view the August 10 letter to the agency as a protest, then we must view that initial agency protest as filed more than 10 days after Map learned of the grounds for protest upon its receipt of the Coast Guard's July 11 letter. Moreover, even if this initial protest to the agency could be viewed as timely, the protest here would still be untimely since Map's September 8 receipt of the Coast Guard's letter would constitute adverse agency action as that term is used in our Procedures. Thus, the protest is untimely and not for consideration.

We recognize that Map apparently was unaware of our Procedures and sought from the Coast Guard information regarding protest procedures. However, because the Bid Protest Procedures were published in the Federal Register (40 Fed. Reg. 17979, April 24, 1975), Map is considered to have been on constructive notice of those Procedures, including the time constraints set forth for filing protests. See Washex Machinery Corporation, B-190726, March 22, 1978, 78-1 CPD 227, and decisions cited therein.

Accordingly, the protest is untimely filed and not for consideration on the merits.

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the typed name.

Milton J. Socolar
General Counsel