

R. Klemm  
Proc. I



**DECISION**

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

9136

FILE: B-193904

DATE: February 12, 1979

MATTER OF: Tate Engineering, Inc.

**DIGEST:**

*[Untimely Bid* Protest alleging impropriety in solicitation] (unduly restrictive brand-name procurement) which is filed after date set for bid opening is untimely under Bid Protest Procedures and not for consideration on merits.

On December 7, 1978, the Department of the Army (Army) issued solicitation DABT56-79-B-0002 for the procurement of eight Peabody/Piatt oil burners. January 9, 1979, was set as the date for bid opening.

Industrial Combustion, Inc. (Industrial Combustion), protested to the procuring activity. By letter dated December 18, 1978, the Army denied the protest. Instead of filing a protest with our Office, Industrial Combustion notified Tate Engineering, Inc. (Tate), <sup>DLG00873</sup> apparently a distributor of Industrial Combustion products, that the protest had been denied and the matter should be pursued further. <sup>DLG00874</sup>

Tate filed a protest with our Office on January 15, 1979, or after bid opening, alleging that there was an impropriety in the solicitation. More specifically, Tate contends that the Army's brand-name procurement was unduly restrictive.

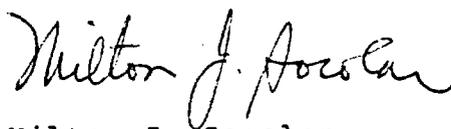
Since Tate alleges an impropriety in the solicitation and the protest was not filed (actually received) until after bid opening, its protest is untimely under 4 C.F.R. § 20.2(b)(1) (1978) of our Bid Protest Procedures and not for consideration on the merits. Title 4 C.F.R. § 20.2(b)(1) (1978) provides in part as follows:

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"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening \* \* \*."

Based on the foregoing, the protest is dismissed.

A handwritten signature in cursive script that reads "Milton J. Socolar".

Milton J. Socolar  
General Counsel