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Proc II

DECISION



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

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FILE: B-195525

DATE: August 9, 1979

MATTER OF: Federal Signal Corporation

[Untimely Protest Alleging Unduly Restrictive Specifications]

DIGEST:

Bid protest submitted to GAO more than 10 days after receipt of notification of adverse action on protest filed with agency is untimely and will not be considered.

(Federal Signal Corporation (FSC) protests the rejection of its bid by General Services Administration (GSA) on Solicitation No. 3FP-BA-R-B-B8446-2-28-79, for fire alarm or smoke detection systems. The protester also requests that GSA revise its purchase description from "brand name or equal" to a performance-type specification.

(After FSC's bid was rejected, it filed a timely protest with GSA contending that it was the low bidder and should have been awarded the contract. GSA responded by letter of May 24, 1979 that FSC's bid was rejected because the equipment it proposed to supply did not meet certain salient characteristics specified.) By letter dated July 18, 1979, received here on July 23, FSC protested to this Office that it should have been awarded the contract and that GSA's requirements unduly restricted competition.

We will not consider FSC's protest because it is untimely. Our Bid Protest Procedures require that:

"If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of notification * * * of initial adverse agency action will be considered * * *. 4 C.F.R. §20.2(a) (1979).

To be timely, FSC's protest should have been filed here within 10 days after FSC's receipt of GSA's letter of

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May 24, because that letter constituted initial adverse agency action on its protest to the procuring agency. See Security Assistance Forces and Equipment, OHG, B-193364, March 27, 1979, 79-1 CPD 203.

It is not clear from the protester's submission whether its initial protest to the agency raised the issue of restrictive specifications. Even assuming that the alleged restrictiveness was not perceived by FSC until it received GSA's May 24 response, the protest on this point on July 23, more than ten days after the basis for protest was known, would also be untimely. 4 C.F.R. 20.2(b)(2). Although, in this connection, the protester requests that the specification be revised to a performance-type specification on future solicitations, that matter ^{was buried and} ~~after further procurement~~ should be raised with the procuring agency, because in the absence of a specific procurement action which can be the subject of a protest, the request to this Office is premature as it affects future procurements.

The protest is dismissed.



Milton J. Socolar
General Counsel