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**DECISION**



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

FILE: B-199445

DATE: July 18, 1980

MATTER OF: Bird-Johnson Company

DLG 04942

**DIGEST:**

Where [protest alleging that specification is unduly restrictive] is filed with contracting agency prior to proposal due date, receipt of proposals without taking requested corrective action constitutes initial adverse agency action. Therefore, subsequent protest to GAO filed more than 10 working days thereafter is untimely. 4 C.F.R. § 20.2(a).

Bird-Johnson Company protests that the specification for a "controlled pitch" propeller in solicitation No. CG-011738-A for nine Coast Guard cutters unduly restricted the firm from participating in the project as a subcontractor. The specification required the contractor to furnish a controlled pitch propeller built by the licensee of a particular designer. The basis for restricting the competition in that manner was the Coast Guard's decision to standardize propeller systems. Bird-Johnson, which also manufactures and supplies controlled pitch propellers but is not a licensee of the named designer, disputes the propriety of that decision.

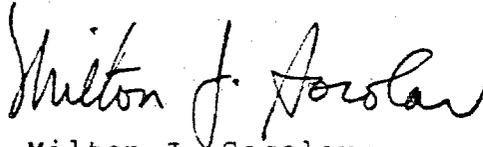
Bird-Johnson originally protested the matter to the Coast Guard by letter of May 14, 1980. We have been informally advised by the Coast Guard that proposals under the prime contract were received on June 3 without change in the subject specification despite the protest. On June 19, the Coast Guard sent Bird-Johnson a letter denying the protest, and the instant protest was filed in our Office on July 2.

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Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), requires that where a protest initially has been filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after "formal notification of or actual or constructive knowledge of initial adverse agency action." We have held that the receipt of proposals without taking the corrective action requested in a protest to the contracting agency constitutes initial adverse agency action as contemplated by that provision. Security Assistance Forces and Equipment International, Inc., B-193695, June 9, 1980, 80-1 CPD \_\_\_\_\_. The fact that an agency subsequently specifically denies a protest by letter does not alter a protester's responsibility to conform to the filing requirement in section 20.2(a). Wakmann Watch Company, Inc., B-187335, January 28, 1977, 77-1 CPD 72.

Since the protest was not filed in our Office within 10 working days after June 3, it is untimely under our Bid Protest Procedures and will not be considered on the merits.



Milton J. Socolar  
General Counsel