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DECISION



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

[Protest of Navy Contract Award]

FILE: B-202076

DATE: March 9, 1981

MATTER OF: Electro Arc Manufacturing Company

DIGEST:

1. Protest alleging unduly restrictive specifications which is filed after closing date for receipt of proposals is untimely and not for consideration on merits.
2. Protest initially filed with GAO more than 10 working days after basis for protest was known is untimely.

Electro Arc Manufacturing Company (Electro) protests the award of a contract to Cammann Manufacturing Company (Cammann) under solicitation No. N00406-80-R-1118, issued by the Department of the Navy. The protester contends that the solicitation's specifications were improperly drafted around the product of Cammann and "should have been more general" and that the Navy erroneously determined that Electro's item did not meet certain specification and performance requirements of the solicitation. For the following reasons, we think the protest is untimely and not for consideration on the merits.

Our Bid Protest Procedures require that protests based on alleged specification improprieties which are apparent prior to the closing date for receipt of initial proposals must be filed before this closing date. 4 C.F.R. § 20.2(b)(1) (1980). Here, the due date for receipt of initial proposals was September 3, 1980, and Electro's protest on this basis was not filed in our Office until February 6, 1981. Since Electro's protest regarding the restrictive nature of the specifications concerns a defect apparent on the face of the solicitation, and it was filed in our Office after the closing date for receipt of initial proposals, it is untimely. Midstate Elevator Co., Inc., B-200789, November 6, 1980, 80-2 CPD 343.

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With respect to the other basis of protest, we understand that the Navy advised Electro of the award on December 18, 1980. By letter of December 30, 1980, the protester filed a Freedom of Information Act (FOIA) request with the Navy requesting the agency's "justification" for the award. As a result, Electro did not become aware of its other grounds for protest until it received the additional information from the Navy. Our Bid Protest Procedures provide that a protest based on other than an apparent solicitation defect must be filed not later than 10 working days after the basis for protest is or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2). The Navy advises that on January 9, 1981, the FOIA information requested was assembled and sent to the protester. However, its protest was received by our Office on February 6, 1981, and thus appears to have been filed more than 10 working days after Electro knew its basis for protest. Consequently, the protest on this second basis also is untimely. Mr. Ely Keenberg, B-196552, January 16, 1980, 80-1 CPD 50.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel