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DECISION



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

FILE: B-201484.2

DATE: May 20, 1981

MATTER OF: J & J Maintenance, Inc.

DIGEST:

[Protest Against Air Force Contract Award]

Where protest is filed with contracting officer more than 10 working days after bid opening, alleging among other things that low bidders unbalanced bids, subsequent protest to GAO is untimely under 4 C.F.R. § 20.2(a), which requires initial protest to procuring agency be timely filed.

J & J Maintenance, Inc. (J & J), has protested the award of a contract to any bidder other than itself under invitation for bids No. F41800-80-B-0525 issued by the United States Air Force.

J & J contends that the two low bids submitted under the IFB are nonresponsive because the bids are unbalanced, the bids constitute a "buy-in" and the bidders are nonresponsive.

Bid opening was September 9, 1980, and by letter of September 26, 1980, J & J protested to the contracting officer. While this letter was not received until October 14, 1980, because of difficulty with the way it was addressed, we find the protest to be untimely filed, even if it had been received by the contracting officer on September 26, 1980.

Our Bid Protest Procedures (4 C.F.R. part 20 (1980)) require that protests be filed within 10 working days of when the basis of the protest is known or should have been known. See 4 C.F.R. § 20.2(b)(2) (1980).

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Since J & J knew or should have known the basis for its protest (i.e., the identity of the bidders and the amounts of the bids), from the September 9, 1980, bid opening, the protest would have to have been filed with the contracting officer by September 23, 1980, to be timely.

While the opening paragraph of J & J's September 26 letter refers to an earlier oral protest and mailgram, there is no evidence of such communications with the letter and our Office has been informally advised by the Air Force that the contract file shows no record of such communications being received.

Therefore, as the protest to the contracting officer was untimely filed, the subsequent protest to our Office is not for consideration on the merits. See 4 C.F.R. § 20.2(a) (1980).

Accordingly, the protest is dismissed.

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