

**DECISION**



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

FILE: B-203798

DATE: July 24, 1981

MATTER OF: Waterbury Farrel, Division of Textron, Inc.

**DIGEST:**

1. Protest to agency regarding alleged improprieties in amendments to solicitation filed after next closing date for receipt of revised proposals was untimely protest to agency, precluding consideration of subsequent protest to GAO.
2. Protest filed with GAO more than 10 working days after protester's receipt of notice that another firm had been selected for award, despite pending protest with contracting agency, is untimely. Selection of awardee, not agency denial of protest, constituted initial agency action adverse to protester, requiring timely subsequent protest to GAO.

Waterbury Farrel, Division of Textron, Inc. (Waterbury), protests the award of a contract to Verson Allsteel Press Company (Verson) for M42/46 cargo blanking, resize and restrike presses under request for proposals No. 0054 issued by Mason Chamberlain, Inc., pursuant to its contract with the Department of the Army for construction of a Government-owned, contractor-operated munition facility.

Although our Office does review the award of subcontracts made "for" the Government by Government prime contractors which operate and manage Federal facilities, Waterbury's protest is untimely and will not be considered on the merits. Sono-Tek Corporation, 58 Comp. Gen. 26 (1978), 78-2 CPD 290.

*[Untimely Protest of Subcontract Award]*

~~017644~~ 115886

Waterbury submitted its proposal in response to the RFP on November 21, 1980, attended technical meetings on March 25, 1981, with Mason Chamberlain and the Army at which increased allowable dimensional and ultrasonic inspection rejection rates were established, and submitted a letter of March 31, 1981, to Mason Chamberlain guarantying that it would meet the new rejection rates.

By letter dated April 24, 1981, Mason Chamberlain amended the RFP specifications to allow eccentric gear type presses, permit either a 3- or 6-blank per press stroke rate and increase the acceptable rejection rates as discussed at the March technical meetings. The letter cautioned offerors that proposals offering noise levels in excess of 85 decibels absolute might not be considered for award, and required that best and final offers be submitted by May 4, 1981.

Waterbury asserts that Mason Chamberlain requested a waiver from the Army of the 2-percent rejection rates established at the technical meetings in order to accept Verson's higher proposed rates, and later amended the specifications when the waiver was denied in ways which made Verson's allegedly deviating equipment and proposal technically acceptable. The protester contends that the lower noise level standard required by the amendment was intended to render Waterbury's proposal unacceptable. Waterbury initially protested these matters to the Army by letter of May 13, 1981, and explains that it did not protest to our Office immediately after the contract was awarded, but waited until after receipt of the Army's response to its protest (the agency's adverse action) on June 15, 1981. We received Waterbury's June 17 protest letter on June 24, 1981.

We find the protest untimely filed in several respects. Insofar as Waterbury took exception to Mason Chamberlain's request that the 2-percent rejection rate be waived, the matter should have been protested within 10 working days after Waterbury learned of the request. The fact that a waiver was not granted, however, renders the issue moot.

Any changes in the specifications, whether they ostensibly favored Verson or restricted Waterbury, were apparent upon the protester's receipt of Mason Chamberlain's April 24 letter, requiring a protest to the agency or to our Office before the May 4 closing date for receipt of best and final offers. 4 C.F.R. § 21.2(b)(1) (1981); Southwestern Bell Telephone Co., B-200523.2, June 5, 1981, 81-1 CPD \_\_\_\_\_. Because Waterbury's May 13 protest was not timely filed with the Army, its subsequent protest to our Office cannot be considered. 4 C.F.R. § 21.2(a) (1981); X-Tyal International Corp., B-202100, March 25, 1981, 81-1 CPD 224.

Contrary to the protester's assertion that receipt of the Army's June 12 response was the agency's initial action adverse to Waterbury's protest, we have ascertained from the Army that Waterbury was orally notified of the award on May 21, 1981, and that written notice to the same effect was mailed to the protester on that date. Selection of another firm for the award, rather than the response to Waterbury's protest, constituted the Army's initial action adverse to Waterbury's protest. See Sono-Tek Corporation, supra.

Because the protester's initial submission is untimely, we have decided the matter on the basis of this submission without requesting an agency report. Hardwick Knitted Fabrics, Inc., B-201245, December 16, 1980, 80-2 CPD 435. The protester's request for oral argument on the merits of the protest pursuant to 4 C.F.R. § 21.7(a) (1981) is denied because a conference would serve no useful purpose. Southwestern Bell Telephone Co., supra.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel