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**DECISION**



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

FILE: B-202531

DATE: August 17, 1981

MATTER OF: Grove Manufacturing Company

**DIGEST:**

1. Where agency denies potential offeror's request for preproposal conference, protest filed more than 10 working days after protester is notified of denial is untimely as to that issue. See 4 C.F.R. § 21.2(b)(2) (1981).
2. Protest that certain features should be incorporated in solicitation is dismissed since GAO will not question agency determination that a less restrictive description will meet its needs.

Grove Manufacturing Company (Grove) protests the Department of the Navy's actions under solicitation No. N00140-81-R-0401, issued by the Naval Regional Procurement Office, Philadelphia, Pennsylvania, for 59 aircraft maintenance cranes. Proposals were received under the solicitation on March 25, 1981. Award has not been made pending our decision.

Grove objects to the failure of the contracting officer to grant Grove's request for a preproposal conference to clarify and discuss aspects of the specifications and procurement documents. Grove has also raised four specific safety issues concerning the specifications for the cranes.

Grove's protest is dismissed.

Pettibone Corporation, an interested party in this case, alleges that Grove's protest is untimely. Pettibone notes that Grove made its request for a preproposal conference and for specification clarification in a January 19, 1981, letter to the Navy. The Navy denied Grove's request for a conference and responded

[Protest of Navy Failure to Grant Preproposal Conference Request]

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to the request for clarification in a letter dated February 17, 1981, to Grove. Pettibone's position is that the Navy's letter constituted initial adverse agency action on Grove's protest under our Bid Protest Procedures, 4 C.F.R. § 21 (1981). Since Grove's protest to our Office was not filed until March 17, 1981 (or more than 10 days after the date (February 27) on which Grove acknowledged receipt of the Navy's February 17, 1981, letter), Pettibone contends that the protest of these issues is untimely and must be dismissed under our Procedures, which require that a protester file its subsequent protest to GAO within 10 days of initial adverse agency action. See 4 C.F.R. § 21.2(a) (1981).

We agree with Pettibone that Grove's protest of the Navy's refusal to hold a preproposal conference is untimely, but for a different reason than that advanced by Pettibone. The Navy letter which Grove received by February 27, 1981, clearly rejected Grove's request for a preproposal conference. Our Bid Protest Procedures require that, in cases other than protests based upon alleged improprieties in the solicitation which are apparent prior to bid opening, bid protests should be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1981). Here, Grove knew the basis for protest concerning the denial of a preproposal conference by February 27, 1981, but did not protest until March 17, 1981, or more than 10 days later. Thus, this issue is untimely filed and is, therefore, dismissed.

We need not decide the timeliness of Grove's allegations that changes are needed in the specifications, since we do not view the allegations as appropriate for our consideration.

In its protest, Grove essentially focuses on four alleged deficiencies related to safety considerations in the specifications. First, Grove insists there is a need for a "state-of-the-art automatic oscillation lock-out" device instead of the required "manual axle lock-outs." The automatic device would allegedly lessen the danger that a crane would tip over as compared with the

"tip-over" danger attending a crane which has only manual lockouts. Grove suggests that an inexperienced operator might not install manual locks, but would obviously employ an automatic locking system. Second, Grove cites the need to revise that part of the specifications which permits an "individual in the crane manbasket to operate the hoist." This change would allegedly eliminate the possibility that an "operator [would] attempt to lift something on the hook while the basket is occupied thereby creating an extremely hazardous situation." Third, the specification should be "rewritten to indicate lowering of load through the hoist only" rather than also permitting the hazardous "lowering [of] the load [through use of] boom lift cylinders." Fourth, Grove argues the need to revise the specification which permits the location of the battery box close to the top of the fuel tank; this revision would be intended to separate a source of electrical sparks from fuel vapors.

Grove is not complaining that it is prevented from competing in this procurement because of unduly restrictive specifications. In fact, Grove did make an offer in response to the solicitation. Rather, Grove is asserting that the Government's interest as user of the crane is not adequately protected, and requires specification changes in order to obtain a safer product.

Assurance that sufficiently rigorous specifications are used is ordinarily of concern primarily to procurement personnel and user activities; it is they who must suffer any difficulties which result from inadequate equipment. Ring Power Corporation, B-201683, March 9, 1981, 81-1 CPD 183. We therefore believe it would be inappropriate to resolve such issues under our bid protest function, absent evidence of fraud or willful misconduct by procurement or user personnel. Ring Power Corporation, above, citing Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417. Neither exception warranting review is alleged here.

Since Grove's protest essentially seeks a determination by our Office that the Government's interest as user of the crane is not adequately protected, this aspect of the protest is dismissed.

Nevertheless, we recognize that Grove's protest raises allegations of potentially dangerous safety problems with the crane. In fact, we understand that the Naval Construction Battalion Center, Port Hueneme, California, has apparently adopted at least one of Grove's recommended safety features incorporating "automatic-type-lockout controls" for the rear axle assembly in a new specification for hydraulic cranes. Therefore, although we are dismissing Grove's protest, by letter of today, we are suggesting that the Navy give further consideration to Grove's allegations regarding the safety features.

*F. H. Barclay, Jr.*  
For Harry R. Van Cleve  
Acting General Counsel