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DECISION

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

FILE: B-205863

DATE: March 2, 1982

MATTER OF: Joerns Furniture Company, Inc.

DIGEST:

Protester argues that it filed October 1981 protest with contracting agency against amendment to solicitation increasing Maximum Order Limitation amount on Federal Supply Schedule items; however, letter communicating alleged protest was not filed with agency prior to solicitation's closing date. Even if we assume October letter constituted protest, December 1981 protest filed with GAO may not be considered under section 21.2(a) of our Bid Protest Procedures since October protest was not timely filed with agency.

Joerns Furniture Company, Inc. (Joerns), protests the increase of the Maximum Order Limitation (MOL) from \$100,000 to \$350,000 under solicitation No. FNMS-S1-1116N issued by the General Services Administration (GSA). The solicitation was for multiple-award Federal Supply Schedule contracts for wall unit and loft group furniture to be used in Government quarters and dormitories.

Joerns contends that there was no sufficient reason for GSA to increase the MOL. The MOL was increased by amendment No. 2 to the solicitation which also extended the closing date for the solicitation to October 14, 1981. By letter dated October 16, 1981, Joerns filed an objection with GSA to the MOL increase. After receiving no response from GSA, Joerns then filed a protest with this Office on December 18, 1981.

GSA argues that Joerns' protest should not be considered by our Office under the circumstances. We agree. Section 21.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 21 (1981)) requires that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals must be filed prior to that date.

Joerns argues, however, that it raised the MOL issue first with GSA and that despite repeated requests, it failed to receive any response from the agency. According to Joerns, not until mid-December 1981, when the company learned that GSA was making awards on the solicitation, did it become apparent that there would be no response from GSA on the matter.

GSA takes the position that Joerns' October 16, 1981, letter was not a formal protest with the agency. We have held that although a letter need not expressly use the word "protest" in order to be characterized as such, it must otherwise clearly convey an intention to protest. Pitney Bowes Inc., B-200016, December 30, 1980, 80-2 CPD 448. In any event, we need not decide whether Joerns' October 16, 1981, letter constituted a protest with GSA in view of the fact that the letter was filed 2 days after the closing date. Under section 21.2(a) of our Bid Protest Procedures, our Office will consider a subsequent, timely protest that was initially filed with the contracting agency provided the protest to the agency was filed within the time limits prescribed by our Bid Protest Procedures. Even if we assume that Joerns' October 16 letter constituted a protest, it was submitted to GSA after the solicitation's closing date; therefore, the letter was not timely filed as a protest with the agency under section 21.2(b)(1) of our Bid Protest Procedures. Consequently, Joerns' December 18 protest to our Office will not be considered.

We dismiss Joerns' protest.

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