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**DECISION**



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

FILE: B-207126

DATE: May 3, 1982

MATTER OF: Bernard Franklin Company

**DIGEST:**

Where a firm initially protests alleged specification defects to the contracting agency prior to bid opening, opening bids without responding to the protest is initial adverse agency action, so that a subsequent protest to GAO must be filed within ten working days thereafter.

Bernard Franklin Company protests two specifications in Department of the Army invitation for bids (IFB) DAKE 27-82-B-0034. According to the protester, IFB amendment 2 introduced an ambiguity regarding the required loading capacity of certain shelves to be furnished under the contract. Moreover, the protester says that a requirement that shelf corners be lapped and welded is unnecessary, and thus an undue restriction or competition. We dismiss the protest.

Bernard Franklin initially protested to the Army shortly before bid opening, on March 25, 1982. Bids nonetheless were opened as scheduled.

Under our Bid Protest Procedures, 4 C.F.R. §§ 21.2 (a), 21.2(b)(1)(1981), protests concerning defects apparent in a solicitation must be filed with our Office or the contracting agency prior to bid opening. If a protest is filed initially with the contracting activity, we will consider a subsequent protest to our Office only if it is filed here within ten working days after the protester has actual or constructive knowledge of initial action by the contracting agency which is adverse to the protest to that agency. The fact that bid opening occurs is constructive notice that the contracting agency rejects the protest.

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Bilsom International, Inc., B-203523, March 8, 1982, 82-1  
CPD 206; Bird-Johnson Company, B-199445, July 18, 1980,  
80-2 CPD 49.

The instant protest was filed in our Office on April 13, more than ten working days after bid opening. Since bid opening was constructive notice of initial adverse agency action on the March 25 protest, the protest to our Office is untimely and is dismissed.

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