

**DECISION**



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

*Golden  
Proc. I*

*118610*

FILE: B-207576

DATE: June 7, 1982

MATTER OF: Sharp Electronics Corporation

**DIGEST:**

1. Protest against alleged improprieties in solicitation which were apparent on receipt of the solicitation must be filed before bid opening.
2. When protest is timely filed initially with contracting agency, subsequent protest filed with GAO more than 10 working days after initial adverse agency action is untimely.

Sharp Electronics Corporation (Sharp) protests the award of a contract to supply electronic calculators under solicitation No. FGE-Y4-75223-A-5-13-82, issued by the General Services Administration (GSA). Sharp states that several companies bid on this item, but that Sharp submitted a "No Bid" because it could not meet the solicitation specifications. Sharp contends that no company can satisfy the specifications, that a certification that the bidder will meet the specifications contained in the solicitation is inadequate to assure compliance with the specifications, and that GSA should have included a testing requirement to ensure the awardee's product complies with the specifications.

We dismiss the protest as untimely.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981), require that protests based upon alleged improprieties in any type of solicitation apparent prior to bid opening be filed prior to bid opening. Sharp's bases of protest--the inadequacy of the certification requirement, the failure to include a testing requirement and the impossibility of complying with the specifications--were apparent from a reading of the solicitation. Since Sharp's protest was filed after bid opening, it is untimely and will not be considered. Sharp Electronics Corporation,

B-205842, March 8, 1982, 82-1 CPD 211; Minority Enterprises,  
B-206321, March 1, 1982, 82-1 CPD 181.

While Sharp, in its protest letter, notes that it discussed the testing requirement with GSA officials prior to bid opening, this does not alter our conclusion that the protest is untimely. Even if we consider the above discussion to have been a protest to the agency, the subsequent protest filed with GAO is untimely. Our Bid Protest Procedures require that when a protest is initially timely filed with a contracting agency, any subsequent protest to this Office must be filed within 10 days of notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1981).

GSA advises that Sharp's meeting with the contracting officer occurred on April 14, 1982. Sharp admits that the contracting officer informed it that there was not a testing procedure to ensure compliance with the specifications and, therefore, GSA relied on the bid certification requirement. Thus, Sharp had actual notice of the agency's initial adverse action on April 14, 1982. Accordingly, its protest received by GAO on May 20, 1982, is beyond the 10-day filing requirement and the protest is untimely. Spectrum Leasing Corporation, B-206112, February 4, 1982, 82-1 CPD 94.

We dismiss the protest.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel