

DECISION



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

FILE: B-210370

DATE: January 17, 1983

MATTER OF: Baxter & Sons Elevator Co., Inc.

DIGEST:

Where firm initially protests alleged specification defects to contracting agency prior to bid opening, opening of bids is initial adverse agency action on protest and subsequent protest to GAO must be filed within 10 working days of protester's actual or constructive knowledge of that action.

Baxter & Sons Elevator Co., Inc. protests provisions contained in Invitation for Bids 549-1-83 issued by the Veterans Administration (VA). Baxter complains that VA proceeded with bid opening notwithstanding its protest that these provisions are unduly restrictive of competition. We dismiss the protest.

Under our Bid Protest Procedures, 4 C.F.R. §§ 21.2(a), 21.2(b)(1)(1982), 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 10 working days after the protester has actual or constructive knowledge of initial adverse action by the contracting agency. The fact that bid opening occurs is constructive notice that the contracting office rejects the protest. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD 414.

Baxter's protest to VA was dated December 10, 1982 and was received by VA by December 13. VA proceeded with bid opening on December 15, as scheduled. Baxter's protest to our Office was filed (received) on January 4, 1983. Since we did not receive Baxter's protest in our Office until more than 10 working days after Baxter knew or should have known of the bid opening, it is untimely.

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The protest is dismissed.

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