

DECISION



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

28512

FILE: B-214798

DATE: June 13, 1984

MATTER OF: Superior Boiler Works, Inc.

DIGEST:

Subcontractor protest alleging agency improperly controlled subcontractor selection is untimely where protest was not filed within 10 working days after basis of protest was known.

Superior Boiler Works, Inc. protests the Department of Agriculture's approval of a boiler manufactured by Cleaver-Brooks under a prime construction contract awarded to Conservco. According to Superior, the boiler does not comply with the specifications under invitation for bids (IFB) 414-B-S&E-83 issued by the Beltsville Agricultural Research Center and a resulting contract (No. 50-32U4-3-414) awarded to Conservco, Inc. We dismiss the protest.

The record shows that the only connection between Superior and the government in this case stems from the government's exercise of a power to approve shop drawings under the Conservco contract. According to Superior, the government has directed a subcontract award to Cleaver-Brooks and in doing so: (1) interpreted the specification arbitrarily to restrict award to Cleaver-Brooks, (2) improperly rejected plans which Conservco initially submitted based upon a Superior boiler, and (3) waived other specifications and approved a Cleaver-Brooks boiler which has inadequate capacity.

Our Office considers subcontractor protests only in limited circumstances. One such circumstance is where the government so actively or directly participated in the selection of a subcontractor that the net effect was to cause or control the prime contractor's selection of a particular firm. Beall Pipe, Inc., B-204203, April 28, 1982, 82-1 CPD ¶ 396.

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To the extent that Superior's protest might qualify for consideration under this test, it is untimely. On January 3, 1984 Superior wrote to its congressman to complain that the government was improperly forcing Conservco to purchase the boiler from Cleaver-Brooks rather than from it. The basis of the complaint advanced by Superior in January is substantially similar to the basis of protest filed with our Office on March 21. Thus, Superior knew of its basis of protest long before the protest was filed. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1984), require that a protest be filed within 10 working days after the basis for protest is known or should have been known. Since the protest is not timely, it will not be considered.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel