

DECISION

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

18984

FILE: B-215687

DATE: July 31, 1984

MATTER OF: Xerox Corporation

DIGEST:

Protest to GAO of defects in solicitation is dismissed as untimely where either initial protest to agency was not filed prior to the closing date of the solicitation or, if it was, then subsequent protest to GAO was not filed within 10 working days of initial adverse agency action--closing the solicitation without making the requested revisions.

Xerox Corporation (Xerox) protests request for proposals No. SSA-RFP-84-0124 for electronic printing systems, issued by the Social Security Administration (SSA), Department of Health and Human Services. Xerox argues that certain technical requirements are so restrictive of competition that the end result is a sole-source procurement.

We dismiss the protest as untimely.

The closing date for receipt of proposals was May 7, 1984. In a letter received by SSA on May 3, Xerox asked questions pertaining to its concerns about the technical requirements. Xerox filed a protest with its proposal on May 7. On July 3, Xerox filed this protest. We find the protest to be untimely regardless of whether the May 3 filing or the May 7 filing is considered to be the protest to SSA.

Our Bid Protest Procedures provide that GAO will consider a protest initially filed with a contracting agency if the initial protest was timely filed and the protest to GAO is filed within 10 working days of initial adverse agency action. 4 C.F.R. § 21.2(a) (1984). A protest of obvious alleged solicitation defects, as this protest is, must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1984). If the May 7 letter filed with Xerox's proposal is considered the protest to SSA, it was untimely because we have held that a

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protest of solicitation defects filed with a proposal does not meet the requirement of filing prior to the closing date for receipt of proposals. Tempest Technologies, Inc., B-213811, Mar. 13, 1984, 84-1 C.P.D. ¶ 302. If the May 3 letter is considered the protest to SSA, the subsequent protest to GAO is untimely because it was not filed within 10 days of initial adverse agency action--closing the solicitation without making the requested revisions. Central Air Service, Inc., B-213205, Feb. 6, 1984, 84-1 C.P.D. ¶ 147.

We dismiss the protest.

Richard R. Pearson

for Harry R. Van Cleve
Acting General Counsel