

DECISION

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

Halperin
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B-216367

FILE:**DATE:** December 11, 1984

Radian Corporation

MATTER OF:**DIGEST:**

Protest to agency of small business set-aside restriction, which is filed with a proposal submitted by the protester does not constitute a timely protest to the contracting agency. Therefore, subsequent protest to GAO will not be considered.

Radian Corporation (Radian), a large business, protests as unduly restrictive the decision to set aside for small business a procurement for Doppler Acoustics Sounding Systems, under letter request for technical proposals No. F04703-84-B-0119, issued by Vandenberg Air Force Base, California.

We dismiss the protest.

Radian initially protested the matter to the Air Force in a cover letter dated August 15, 1984, which it enclosed with a technical proposal due by August 20, 1984. The proposal package, with the enclosed protest, was received by the Air Force on August 17. Radian's subsequent protest to GAO was filed on September 11, 1984.

Our Bid Protest Procedures require that a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed with the contracting agency or with GAO prior to that date. See 4 C.F.R. § 21.2(b)(1) (1984). The objection to the decision to set aside is an alleged impropriety that should have been lodged prior to the closing date for receipt of initial proposals. See GMI Industries, Inc., B-215778, July 20, 1984, 84-2 C.P.D. ¶ 77.

Radian's August 15 protest letter to the Air Force, was filed with its technical proposal and, therefore, it was untimely filed under 4 C.F.R. § 21.2(b)(1) (1984). See Tempest Technologies, Inc., B-213811, Mar. 13, 1984, 84-1 C.P.D. ¶ 302; Glatzer Industries Corp.--Reconsideration, B-209440.2, Mar. 1, 1983, 83-1 C.P.D. ¶ 211. The fact that the protest letter was dated and received prior to the

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closing date for receipt of initial proposals does not make the protest timely, since an agency is not obligated to read or evaluate proposals until after the closing date. Colorado Research and Prediction Laboratory--Reconsideration, B-199755.2, May 11, 1981, 81-1 C.P.D. ¶ 369. Here, the Air Force did not, in fact, open Radian's proposal package until after the closing date.

Where, as here, a protest is filed initially with the contracting agency, GAO will consider a subsequent protest only if the initial protest was timely filed, and the subsequent protest is filed within 10 days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1984).

Since the protest to the agency was not timely, we will not consider the subsequent protest to us. We note that even if the initial protest had been timely filed, we would not consider the subsequent protest because it was not filed within 10 days of the initial adverse action--passage of the closing date without the Air Force taking the corrective action requested in Radian's initial protest.

Harry R. Van Cleve
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General Counsel