

**DECISION**

*Warren*  
30615

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

FILE:B-218200

DATE: March 6, 1985

MATTER OF: Haskell Corporation

**DIGEST:**

Protest filed with GAO more than 10 working days after protester learned of initial adverse agency action on protest filed with agency is untimely. Protester's continued pursuit of protest with contracting agency, while that agency further investigated the matter, does not alter this result.

Haskell Corporation (Haskell) protests award of a contract to Engineering Materials Co., Inc., under invitation for bids No. DLA500-84-B-1588, issued by the Defense Industrial Supply Center (DISC) for the supply of plain hexagon, nickel-copper alloy nuts. Haskell alleges that a "mistake" existed in Engineering Materials' bid and that the bid is "nonresponsive" because it is "based on" the use of nickel-copper alloy not meeting the specifications.

We dismiss the protest as untimely.

DISC solicited bids for the supply of nuts made of "NICKEL COPPER ALLOY, CLASS B," material. When bids were opened on August 23, 1984, it appeared that Engineering Materials had submitted the low bid of \$0.459 per nut while Haskell had submitted the second low bid of \$0.517 per nut.

However, by letter of September 4, Haskell protested to DISC award to Engineering Materials, questioning whether that firm proposed to supply material of nondomestic origin and of class "A," rather than the required class "B," nickel-copper alloy. As indicated by the contracting officer's September 25 acknowledgment of the protest, DISC understood Haskell to be protesting that "the bid of Engineering Materials Co. is either based on the furnishing of foreign material or Class A material." Haskell has recently confirmed to our Office that it questioned in its September 4 protest "whether Engineering Materials had based its bid on quotations for Class A alloy."

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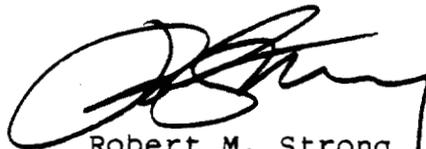
On November 20, the contracting officer "denied" Haskell's protest that Engineering Materials' bid was based on furnishing foreign or class "A" material. Thereafter, apparently on December 3, 1984, Haskell's counsel contacted DISC's Office of Counsel to request further investigation of Haskell's protest. Haskell, apparently relying on its understanding that DISC had agreed "to further investigate" the matter, did not immediately appeal the contracting officer's decision.

Haskell informs us that DISC's further investigation uncovered a quotation from Engineering Materials' supplier for "Class B Alloy Type 400." Haskell indicates that "Type 400" material is the same as class "A" alloy and that the supplier has admitted that the quotation in fact referred to class "A" rather than to class "B" alloy. Nevertheless, Haskell reports that it received on February 2, 1985, a January 31 decision of the contracting officer in which the latter indicated that "I hereby affirm my denial of your protest" on the grounds that the quotation for type 400 alloy had no effect on the pricing of Engineering Materials' bid and that the subcontractor's error had since been corrected. Haskell thereupon filed this protest with our Office on February 15.

Section 21.2 of our Bid Protest Regulations, 49 Fed. Reg. 49,417, 49,420 (1984), provides that protests must be filed within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. Where the protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action on the protest.

Haskell's failure to protest to our Office within 10 working days of learning of DISC's November 20 denial of Haskell's initial protest renders untimely the subsequent protest to our Office. The fact that Haskell continued to pursue the matter with DISC in the hopes that the agency, upon further investigation and reflection, would change its adverse decision did not alter the requirement that a subsequent protest to our Office was required to be filed within 10 working days of actual or constructive notice of initial adverse agency action. See Pierce Coal Sales International--request for reconsideration, B-218003.2, Feb. 25, 1985, 85-1 C.P.D. ¶ \_\_\_\_\_; Allis-Chalmers Corp., B-214388, Mar. 16, 1984, 84-1 C.P.D. ¶ 320.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written over a large, stylized circular flourish.

Robert M. Strong  
Deputy Associate General Counsel