

**DECISION**



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

**FILE:** B-218628.2                      **DATE:** June 11, 1985  
**MATTER OF:** BST Systems, Inc.--Request for  
Reconsideration

**DIGEST:**

When a protest alleging solicitation improprieties is filed initially with the contracting agency prior to bid opening, the opening of bids without an agency response constitutes initial adverse action, and a subsequent protest to GAO must be filed within 10 working days thereafter.

BST Systems, Inc. requests that we reconsider our May 16, 1985 dismissal of the firm's protest to this Office. The protest alleged that certain solicitation terms contained in invitation for bids (IFB) No. N00024-84-B-6146, issued by the Naval Sea Systems Command (NAVSEA), were ambiguous and unreasonable. We dismissed the protest as untimely because it was not filed with our Office within 10 working days following initial adverse agency action on a protest filed with NAVSEA prior to bid opening. Our action was in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which provide that when a protest has first been filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester knew or should have known of adverse agency action on the initial protest.

We affirm our prior decision.

In its request for reconsideration, BST argues that there was no initial adverse agency action until May 6, 1985, when it received NAVSEA's denial of its agency-level protest. BST has misunderstood the term "initial adverse agency action." When a bidder protests directly to an agency prior to bid opening alleging that the terms of the solicitation are defective, the opening of bids itself may constitute "initial adverse agency action." 4 C.F.R. § 21.0(e). The protester may not wait until it receives

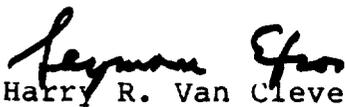
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the agency's decision on the merits of the protest, but must file any subsequent protest to this Office within 10 working days after it knows or should know that bias were opened. United Technical Products, Inc.--Request for Reconsideration, B-218060.2, Feb. 28, 1985, 85-1 CPD ¶ 264.

Here, bid opening took place as scheduled, and the firm did not protest to us until May 16, more than 4 months after the opening of bids. Accordingly, we view the protest here as clearly untimely.

Subsequent to filing the reconsideration request, the protester orally advised us that among other things, it also intended to protest the Navy's denial of its request for a waiver of first article testing. However, this basis for protest is difficult if not impossible to discern from the original protest. In this respect, GAO Bid Protest Regulations require that a protest be in writing and contain a detailed statement of the legal and factual grounds of protest. 4 C.F.R. §21.1(c)(4) (1985). A fundamental requirement of an adequately detailed statement of protest is that the statement clearly express each separate ground for protest. Cf. Siska Construction Company, Inc., B-217066, Feb. 5, 1985, 85-1 CPD ¶140. Since the intent to protest the denial of the request for first article testing was not clearly stated as a ground for protest, we did not request an agency report, and we are not inclined to do so at this late date on the basis of an oral clarification.

The prior dismissal is affirmed.

*for*   
Harry R. Van Cleave  
General Counsel