

DECISION

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

FILE: B-219110.2 **DATE:** July 10, 1985
MATTER OF: Ralcon Inc.--Request for Reconsideration

DIGEST:

Protest concerning alleged improprieties apparent on the face of solicitation was correctly dismissed as untimely when filed over 4 months after closing date for submission of initial proposals.

Ralcon Inc. (Ralcon) requests that we reconsider our June 11, 1985, dismissal of its protest as untimely under 4 C.F.R. § 21.2(a)(1) (1985). This section of our Bid Protest Regulations provides in pertinent part that protests based on alleged improprieties in a solicitation apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date.

We affirm our prior dismissal.

The protest concerns request for proposals (RFP) No. DAAA09-84-R-0660 issued by the United States Army Armament, Munitions, and Chemical Command, Rock Island, Illinois, for the furnishing of hydraulic cylinder assemblies. The RFP was issued on November 21, 1984; the closing date for receipt of initial proposals was February 6, 1985. The protest was filed with our Office on June 11, 1985.

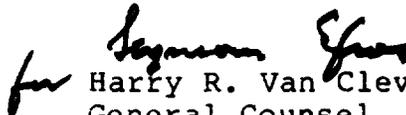
Ralcon contends that there is a contradiction inherent in the solicitation specifications which makes it impossible to satisfy all of them. The protester claims that the rate at which the piston rod is permitted to drift during first article testing cannot be achieved if pilot check valves having a leakage rate allowed by the specifications are used in the assembly. Correspondence enclosed with the protest shows that Ralcon raised the identical issue with Rock Island concerning the same item in October and November 1984, when under an existing contract the protester's item did not pass this first article testing requirement. The identical specification impropriety which Ralcon asserts exists in RFP -0660, therefore, already was the subject of a contractual dispute before RFP -0660 was issued.

032538

We dismissed Ralcon's protest on the basis that it did not protest the specifications of RFP -0660 until 4 months after the closing date for receipt of initial proposals had passed. In its request for reconsideration, Ralcon argues that we erred because the basis for its protest did not actually arise until 3 months after the closing date, when an engineer at the specification-preparing activity allegedly advised the contracting officer that the specifications, in fact, should be revised. It is the contracting officer's failure to request revised proposals on the basis of corrected specifications which the protester asserts it is protesting and as to which, it maintains, its protest is timely.

In correspondence to the procuring activity written before RFP -0660 was issued, Ralcon stated that the same specification requirement as that now under protest made its existing contract "grossly erroneous in terms of performability." RFP -0660, as issued, contained the same alleged specification defect as that which had given rise to Ralcon's previous contractual dispute. As we indicated above, under our Bid Protest Regulations, a protest concerning an alleged impropriety apparent on the face of a solicitation must be filed prior to the closing date for submission of initial proposals. IMODCO, B-216259, Jan. 11, 1985, 85-1 CPD ¶ 32. Ralcon did not file its protest until over 4 months thereafter, following an alleged recommendation by a government employee favorable to it. As our regulations and decisions make clear, such a protest is untimely and, therefore, will not be considered.

Since Ralcon has failed to provide new evidence or legal arguments which show that our prior dismissal was erroneous, that decision is affirmed. Koch Corporation-- Reconsideration, B-212304.4, July 31, 1984, 84-2 CPD ¶ 132.


for Harry R. Van Cleve
General Counsel