

DECISION

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

FILE: B-220894 **DATE:** November 1, 1985
MATTER OF: Energy Forms, Incorporated

DIGEST:

Protest filed with GAO within 10 working days of agency's denial of protest is untimely because it pertains to alleged defect in invitation for bids and was not filed initially with the agency until after bid opening.

Energy Forms, Incorporated (EFI) protests the award of a contract under invitation for bids (IFB) No. F10603-85-B-0041, issued by the Department of the Air Force. EFI alleges that the IFB's specifications are ambiguous.

We dismiss the protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), require that protests alleging improprieties in an IFB which are apparent prior to bid opening be filed prior to bid opening. Under section 21.2(a)(3), a protest initially filed with the contracting agency will be considered by our Office only if it was filed originally in accordance with this time limit. LaForge Construction Contracting, Inc., B-214222, Feb. 10, 1984, 84-1 CPD ¶ 173.

Here, EFI was aware of the deficiencies of which it complains prior to bid opening but did not file a protest with the Air Force until after bid opening. EFI asserts that we should nonetheless consider the matter since it did not have sufficient time to protest prior to award and that by doing so it would have lost its competitive advantage.

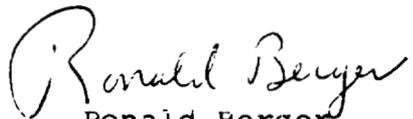
We reject this argument. EFI was required to protest prior to bid opening, not award, and we see no reason why the firm could not have raised this issue earlier. Furthermore, all bidders should be provided an opportunity to compete and bid on an equal basis, and if EFI believed that the specifications were deficient, a protest filed prior to bid opening would have permitted the agency to

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consider the allegations when corrective action, if warranted, is most practicable and, thus, least burdensome on the conduct of the procurement. Kogen Industries, Inc., B-213486.2, Mar. 2, 1984, 84-1 CPD ¶ 260. EFI willingly participated in the competition despite its belief that the IFB was defective and for our Office to consider its protest at this time would render meaningless the purpose of our timeliness rules.

EFI has also requested reimbursement of its bid preparation expenses and the cost of filing and pursuing this protest. However, a claim for such costs which is submitted in connection with an untimely protest will not be considered. Blumfeldt Engineering Co., B-217529, Jan. 25, 1985, 85-1 CPD ¶ 103.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel