

DECISION



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

FILE: B-220070 **DATE:** November 26, 1985
MATTER OF: Federal Acquisition Management
Training Service

DIGEST:

Protest of alleged solicitation defects is untimely where the firm initially protested to the contracting agency prior to the closing date for receipt of proposals, but did not protest to GAO within 10 working days of closing. Where the agency does not take corrective action requested regarding solicitation defects, closing constitutes the initial adverse action on an agency-level protest.

Federal Acquisition Management Training Service (FAMTS) protests any award of contract under solicitation No. 00600-85-R-2755, issued by the Naval Regional Contracting Center, Washington, D.C., for services relating to a series of procurement training courses.

We dismiss the protest as untimely.

FAMTS initially protested to the agency by letter of July 16, 1985, alleging improprieties apparent on the face of the solicitation and requesting that the solicitation be canceled and reissued. The protester contended that the solicitation should have been issued as a total small business set-aside; that it should have been divided into smaller units in order to enhance competition; and that the Statement of Work as written was unreasonably restrictive.

The closing date for receipt of proposals was July 19, 1985. On September 5, the contracting officer responded to FAMTS' initial protest, and on September 13, FAMTS filed this protest with our Office. FAMTS characterizes the protest as an "appeal" of its protest before the agency, and has incorporated the July 16 protest herein. Although the protester has added some arguments and comments to the initial protest, the bases of protest are the same.

Section 21.2(a) of our Bid Protest Regulations requires that, if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1985). The quoted phrase is a term of art that is construed to include knowledge that the agency proceeded with the receipt of proposals in the face of the protest. Computer Dynamics, Inc., B-217585, Jan. 25, 1985, 85-1 CPD ¶ 106. Here, since the protest was filed in our Office on September 13, some 8 weeks after the July 19 closing, the protest is untimely.

Furthermore, the fact that an agency later formally denied the agency-level protest, as the Navy did here, does not alter the protester's responsibility to conform to the filing requirements of our Bid Protest Regulations in protesting to our Office. Id.

The protest is dismissed.

for 
 Ronald Berger
 Deputy Associate
 General Counsel