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DECISION



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

FILE: B-221284.2

DATE: December 18, 1985

MATTER OF: Calox Inc.--Request for Reconsideration

DIGEST:

protest is dismissed as untimely where
protester delayed more than 2 months after
agency's opening of bids in face of oral
protest to agency to file with GAO.

Calox Inc. (Calox) requests reconsideration of our
dismissal of its protest concerning invitation for bids
(IFB) No. VA691-230-85 issued by the Veterans Administration
(VA).

The request for reconsideration is dismissed.

On November 27, 1985, we received Calox's protest that
the firm did not have sufficient time to prepare its bid
because the VA improperly failed to notify it of the pro-
curement until 1 day before the September 5, 1985, bid open-
ing date. We dismissed Calox's protest as untimely because
the firm knew of the September 5 bid opening date prior to
bid opening, but failed to file its protest prior to that
date. In this regard, section 21.2(a)(1) of our Bid Protest
Regulations, 4 C.F.R. § 21.2(a)(1) (1985), requires that a
protest based upon alleged improprieties in a solicitation
which are apparent prior to bid opening be filed prior to
bid opening.

On reconsideration, Calox alleges that it filed an oral
protest with the VA prior to bid opening and, therefore, we
should consider its November 27 protest here as timely.

Calox's protest to this Office is still untimely.
While it appears that Calox may have made a timely oral pro-
test to the agency, that protest in effect was answered when
the agency opened bids on September 5, 1985, in the face of

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Calox's objection. Our regulations require that if a protest is filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester knows of initial adverse action on the protest filed with the agency. 4 C.F.R. § 21.2(a)(3). Since the bid opening constituted adverse agency action (see, 4 C.F.R. § 21.0(e)), Calox's protest filed here on November 27, 1985 (more than 2 months after the September 5, 1985, bid opening), is untimely and will not be considered on the merits. United Technical Products, Inc.--Request for Reconsideration, B-218060.2, Feb. 28, 1985, 85-1 C.P.D. ¶ 264; Lowe Brothers Electric Co., B-217583, Jan. 29, 1985, 85-1 C.P.D. ¶ 119.

The request for reconsideration is dismissed.



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