

**DECISION**

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

**FILE:** B-221560.2**DATE:** February 10, 1986**MATTER OF:** Abbott Products, Inc.--Reconsideration**DIGEST:**

Decision dismissing protest against restriction in solicitation as untimely is affirmed where protester did not file its protest with the contracting agency or this Office prior to the closing date for the receipt of proposals.

Abbott Products, Inc. (Abbott), requests that we reconsider our decision in Abbott Products, Inc., B-221560.1, Jan. 15, 1986, 86-1 C.P.D. ¶ \_\_\_\_\_, in which we dismissed as untimely Abbott's protest against the rejection of the proposal it submitted in response to Department of the Army request for proposals (RFP) No. DAAA09-85-C-1960. We affirm our decision.

The RFP, issued to procure pallets, was restricted to offerors that were mobilization base producers. In its original protest, Abbott asserted that the restriction was improper because only one source was so qualified. We dismissed the protest as untimely because the restriction was apparent on the face of the RFP and Abbott did not file its protest until January 6, 1986, after the November 22, 1985, closing date for the receipt of proposals.

In its request for reconsideration, Abbott asserts that it did not learn that the Army would not consider its proposal until after December 18th. Abbott requests that we consider its protest timely because it was filed here within 10 working days after Abbott learned the Army's position, the timeframe within which our Bid Protest Regulations, 4 C.F.R. part 21 (1985), permit certain types of protests to be filed.

Although our Regulations do permit the filing of a protest against other than an apparent solicitation defect within 10 working days after the basis for protest is known, 4 C.F.R. § 21.1(a)(2), they also require that where, as here, a protest is based on a solicitation impropriety apparent from the face of the solicitation, it must be filed

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with the contracting agency or this Office before the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(3). The purpose of that requirement is to enable our Office (or the contracting agency, if the protest is filed there) to review the matter and take effective action, if warranted--for example, recommending that the solicitation be amended--when most practicable. See Dynamics Research Corp., B-213273, Dec. 28, 1983, 84-1 C.P.D. ¶ 33. Our timeliness rules do not permit a firm to compete in a procurement under which it knows from reading the solicitation that it is ineligible for award and then protest the finding of ineligibility.

Since Abbott did not file its protest against the solicitation's restriction to mobilization base producers before offers were due, the protest was untimely. Our prior decision is affirmed.

  
for Harry R. Van Cleve  
General Counsel