



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Janke and Company, Inc.  
File: B-225572  
Date: December 29, 1986

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### DIGEST

Protest based on a solicitation impropriety incorporated into the solicitation after initial proposals were due must be filed before the next closing date for receipt of proposals.

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### DECISION

Janke and Company, Inc., protests that the Department of the Navy request for proposals (RFP) No. N00140-86-R-2160 is defective. We dismiss the protest as untimely.

The RFP required, among other things, that offerors supply an engine instrument panel obtained from G&S Systems, Inc., of Bedford, Massachusetts. On October 23, Janke received notice from G&S that the firm was going out of business and would not accept orders for the instrument panel. On October 27, the Navy requested Janke to submit a best and final offer (BAFO) by November 4. Janke submitted the BAFO, and by letters dated November 11 and November 26 informed the contracting officer that G&S could not supply the instrument panel. Janke requested that the RFP therefore be amended to permit offerors to use an alternate source and that negotiations be reopened. The Navy responded to the respective letters on November 13 and December 2, stating that it was evaluating the situation to determine the appropriate course of action. On December 18, Janke protested to our Office that the RFP is defective.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986), require that protests based on improprieties apparent from the face of a solicitation be filed with the contracting agency or this Office prior to the closing date for the receipt of proposals. If an impropriety does not exist in the initial solicitation but becomes apparent after initial proposals are due, it must be protested before the next

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closing date for the receipt of proposals. Id. Here, Janke knew by October 23 that the part could not be obtained from G&S, and it thus was apparent on this date that the solicitation was defective because offerors were required to supply an instrument panel obtained from G&S. Consequently, Janke was required to file its protest before November 4, the closing date for the receipt of BAFO's. Since Janke's did not file a protest on the matter prior to November 4, the protest is untimely and we will not consider it on the merits.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name of the signatory.

Robert M. Strong  
Deputy Associate  
General Counsel