



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** Amray, Inc.  
**File:** B-229484  
**Date:** November 13, 1987

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### **DIGEST**

Protest is untimely where letter in record written by protester indicates that protester knew the basis for protest more than 10 days prior to filing of the protest.

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### **DECISION**

Amray, Inc., protests the award of a contract to Carl Zeiss, Inc. for an electron microscope under invitation for bids (IFB) No. DAAK60-87-B-0038, issued by the Department of the Army. Amray contends that the Army's determination that Amray's product did not comply with the specifications was improper and that as an American manufacturer its product should have been chosen over that of a foreign manufacturer whose product was not covered by a General Services Administration Federal Supply Schedule (FSS) contract.

We dismiss the protest.

The Army issued the IFB on July 28, 1987 on a brand name or equal basis with the Zeiss model as the brand name item. At a meeting held after the August 28 bid opening, the protester was advised of the reasons its bid was not considered responsive to the salient characteristics listed in the solicitation. On September 30, award was made to Zeiss.


On October 6 Amray filed with the agency a Freedom of Information Act (FOIA) request which indicated both that it knew Zeiss was a foreign manufacturer and that Zeiss had

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been awarded the contract.<sup>1/</sup> Amray does not argue that the FOIA request produced information needed for its protest, which was filed on October 26.

Our regulations provide that in cases other than those involving improprieties in solicitations, protests shall be filed not later than 10 days after the basis of the protest is known or should have been known, whichever is earlier. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987). Amray's protest concerning both foreign manufacture of the winning microscope, its non-FSS status, and the Army's determination that Amray did not meet the salient characteristics is untimely. Since Amray's letter shows that it learned of the award to Zeiss by October 6 and since it had previously been informed of the basis for the rejection of its bid, the protest should have been filed in our Office by October 21. Because the protest was not filed until October 26, it is untimely and will not be considered.

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel

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<sup>1/</sup> Amray contends that it did not know award had been made to Zeiss until October 13. Amray's October 6 FOIA request, however, stated "Amray, Inc. requests specific information concerning the award made to Carl Zeiss, Inc. under solicitation No. DAAK60-87-B-0038 . . . ." The protester has not explained the wording of the October 6 letter; we therefore think it indicates that Amray knew of the award at the time the letter was written.