



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Kettenburg Marine Corporation  
File: B-230628.2  
Date: May 2, 1988

### DIGEST

Protest based on solicitation defect allegedly learned after bid opening is untimely where protester did not file the protest within 10 days of learning of the defect.

### DECISION

Kettenburg Marine Corporation (KMC) protests a defect in invitation for bids (IFB) No. N62791-88-B-0031 issued as a small business set-aside by the Naval Sea Systems Command.

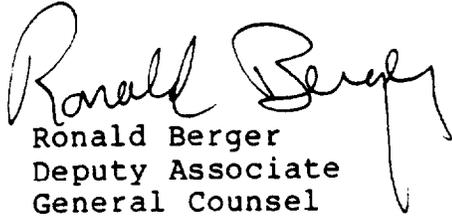
In an earlier protest, KMC challenged the contracting officer's determination that KMC was nonresponsible and the Small Business Administration's (SBA's) refusal to issue a certificate of competency (COC) because KMC planned to subcontract 79 percent of the work. We denied the protest, stating that since KMC planned to subcontract more than 50 percent of the work, the actions of the Navy and the SBA were in accordance with recent amendments to the Small Business Act. Kettenburg Marine Corp., B-230628, Mar. 23, 1988, 88-1 CPD ¶ \_\_\_\_\_.

KMC now argues in its protest filed April 13 that the solicitation was defective because it did not inform bidders of the restrictions on the amount of subcontracting permitted. This protest is untimely. If, as KMC claims, it had no actual knowledge of the restrictions prior to submitting its bid, the protester knew of them at least upon receipt of the SBA's March 4, 1988 letter informing KMC that it was ineligible for a COC because of the Small Business Act amendments restricting the amount of subcontracting. KMC's March 8, 1988 protest to our Office mentioned the SBA's letter but did not raise the issue of the alleged solicitation defect. This issue must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1988). Southeastern Computer Consultants, Inc., B-229064, Jan. 19, 1988, 88-1 CPD ¶ 48.

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Since KMC had actual knowledge of the statutory source of the subcontracting restrictions by March 8, its April 13 protest, filed more than 10 working days after the basis of protest was known, is untimely under 4 C.F.R. § 21.2(a)(2).

The protest is dismissed.

  
Ronald Berger  
Deputy Associate  
General Counsel