



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Systonetics, Inc.

**File:** B-231070

**Date:** May 3, 1988

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### **DIGEST**

1. Protest to the General Accounting Office (GAO) against the rejection of a proposal as technically unacceptable will not be considered because the initial agency-level protest was not timely filed. The fact that the contracting agency considered the protest on the merits does not waive GAO's timeliness requirements.
2. Protest that statement of work contained in solicitation was too generic and therefore inadequate is untimely when not filed prior to the initial closing date for submission of proposals.

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### **DECISION**

Systonetics, Inc., protests the rejection of its proposal and any award of a contract under request for proposals (RFP) No. DAAB07-88-R-L808, issued by the United States Army Communications Electronics Command for engineering and management services. Systonetics contends that its proposal was improperly rejected as technically unacceptable and that the solicitation was inadequate because the statement of work contained therein was "of such a generic nature that any response . . . [could] only be of a generic nature."

We dismiss the protest as untimely.

By letter dated February 9, 1988, Systonetics was informed that its proposal was technically unacceptable because of deficiencies in its technical approach, understanding of the statement of work, adequacy of response and completeness. Thereafter, Systonetics, by letter dated March 3, filed a protest with the contracting officer objecting to his determination that the firm's proposal was technically deficient. By letter of March 30, the contracting officer denied Systonetics' protest. Systonetics' subsequent protest to our Office was filed on April 18.

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In response to Systonetics' protest, the Army requests that we dismiss the protest because the firm's initial protest to the agency was not filed until March 3, more than 10 working days after February 12, the date on which Systonetics acknowledges that it received notice of the information which provided the basis for its protest. 4 C.F.R. § 21.2(a)(2) (1988).

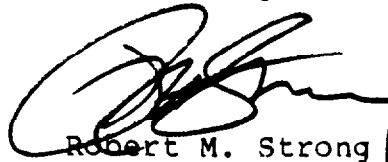
Under our Bid Protest Regulations, when a protest is initially filed with the contracting agency, it must be filed within 10 days after the basis of protest is or should have been known in order for our Office to consider a subsequent protest. 4 C.F.R. § 21.2(a)(3); Benju Corp., B-228571, Nov. 4, 1987, 87-2 CPD ¶ 445. Here, the documents submitted by the protester as attachments to its protest confirm the agency's allegation that by February 12, the protester knew that its proposal was rejected as technically unacceptable and the reasons therefor. Thus, to be timely under our Regulations, Systonetics should have filed its agency-level protest within 10 days of that date, that is, by February 26. The fact that the Army considered the untimely protest on the merits and issued a decision does not change our conclusion since our timeliness Regulations may not be waived by the action or inaction of a procuring agency. See Benju Corp., B-228571, supra.

We also find Systonetics' allegation that the solicitation was defective to be untimely. Our Regulations require protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals to be filed prior to that date. 4 C.F.R. § 21.2(a)(1).

The Army advises that the closing date for receipt of initial proposals was November 30, 1987. It is evident from the record that the alleged deficiencies in the statement of work were apparent from the face of the solicitation when it was issued. Further, the record contains evidence that clarification questions were posed to the contracting officer regarding the statement of work and the agency's answers thereto were provided to Systonetics by letter dated November 10, 1987. Thus, any further concerns that the protester had regarding the solicitation requirements which were not clarified by the agency should have been protested to either the contracting agency or this Office prior to November 30, 1987. Since this protest ground was not raised

until April 18, 1988, it is untimely and will not be considered. See Southwest Marine of San Francisco, Inc., B-229654, Nov. 30, 1987, 87-2 CPD ¶ 531.

Accordingly, the protest is dismissed.



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