

Miller



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Norfolk Dredging Company

File: B-236259

Date: August 11, 1989

DIGEST

An agency's act of conducting bid opening despite a firm's timely agency-level protest constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) 11 weeks later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

DECISION

Norfolk Dredging Company (NDC) protests the small business set-aside under invitation for bids (IFB) No. DACW65-89-B-0024, issued by the U.S. Army Corps of Engineers for maintenance dredging of the Norfolk Harbor Channel, Elizabeth River and Hampton Roads, Virginia. NDC, a large business concern, contends that the dredging should have been procured on an unrestricted basis.

We dismiss the protest as untimely.

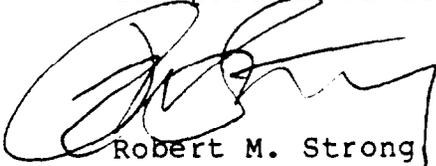
By letter dated April 7, 1989, NDC filed a protest with the Army against the Army's decision to set aside the solicitation. Despite NDC's protest, the Army proceeded with the procurement and opened bids on April 27, 1989. The Army denied NDC's protest by letter of July 10, which was received by the protester on July 14. NDC filed its protest in our Office on July 21.

Under our Bid Protest Regulations, a protest initially filed with the contracting agency must be filed in our Office within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1988). Here, the Army's decision to proceed with bid opening without taking the corrective action requested in NDC's protest constituted initial adverse agency action. 4 C.F.R. § 21.0(f); Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457. Rather than waiting for the

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Army's formal response to its protest, NDC should have filed its protest within 10 days of the April 27 bid opening date. Since NDC did not file its protest with our Office until July 21, more than 10 working days after bid opening, the protest is untimely.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over a rectangular box.

Robert M. Strong
Associate General Counsel