



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Allen Organ Company

**File:** B-237061

**Date:** September 29, 1989

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### DIGEST

Where a firm initially protested solicitation's requirements to contracting agency prior to closing date for receipt of initial proposals, the agency's receipt of initial proposals without taking the requested corrective action constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) more than 6 weeks later, based on the agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

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### DECISION

Allen Organ Company protests alleged defects in request for proposals No. DTCG81-89-R-00616, issued by the United States Coast Guard, Department of Transportation, for the repair of the Governors Island St. Cornelius chapel pipe organ.

We dismiss the protest.

Upon receiving the above solicitation Allen Organ protested to the Coast Guard by letter dated April 20, 1989, stating that the requirement for repair of the pipe organ was improper since a digital computer organ, which Allen Organ makes, would be substantially superior to the repaired pipe organ and would be at a lower price. Allen Organ states that a subsequent telephone conversation with the contracting officer indicated that the Coast Guard was considering all options for its organ requirements. Allen received no response to its June 15 letter memorializing this conversation other than five amendments to the RFP extending the closing date for receipt of proposals.

Allen Organ states it was aware that closing then occurred on August 7. On August 10, Allen Organ wrote to the contracting officer regarding its protest and requesting that it be allowed to submit its offer. On September 13, Allen Organ received a letter from the Coast Guard in which

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the Coast Guard stated its insistence on having the pipe organ rehabilitated rather than purchasing a new electronic organ. Allen Organ then protested to our Office on September 22.

Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely under our Bid Protest Regulations, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1989). The term "adverse agency action" is defined in our Bid Protest Regulations to include the agency's proceeding with the receipt of proposals in the face of the protest. 4 C.F.R. § 21.0(f); Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457. It is our general view that, once the contracting activity proceeds with accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. Id.

As noted above, Allen Organ filed its agency-level protest prior to closing, but the Coast Guard nevertheless subsequently proceeded with closing on August 7. Since Allen Organ did not file its protest at GAO until September 22, more than 6 weeks after closing, its protest is untimely.

The protest is dismissed.



Robert M. Strong  
Associate General Counsel