



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter Of:** Essex Electro Engineers, Inc.

**File No.:** B-259480

**Date:** December 2, 1994

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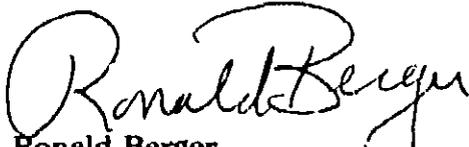
### DECISION

Essex Electro Engineers, Inc. protests the restrictive specifications in solicitation No. DAAK01-94-R-0093 issued by the Department of the Army.

We dismiss the protest as untimely because it was filed more than 10 working days after the protester initially received actual or constructive knowledge of adverse agency action on its agency-level protest. Essex timely protested the overly restrictive specification to the agency prior to the closing date for receipt of proposals set for October 18, 1994. However, the agency proceeded with the receipt of proposals as scheduled. Essex did not protest here until November 22 after it received a letter from the agency on November 17 denying its protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, 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). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. It is our general view that once the contracting activity proceeds with opening bids or 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. Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221.

Therefore, when the agency proceeded with accepting proposals on October 18, Essex was required to file any subsequent protest here within 10 days of learning of that agency action. The instant protest, filed on November 22, is untimely and will not be considered.

  
Ronald Berger  
Associate General Counsel