



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter Of:** Achievement Products, Inc.

**File No.:** B-259381

**Date:** December 2, 1994

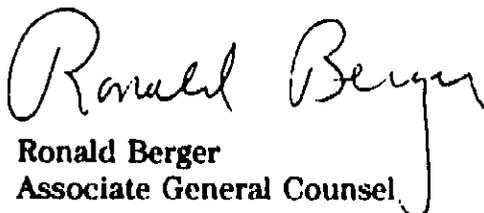
---

### DECISION

Achievement Products, Inc. protests the specifications of solicitation No. 7FXG-R4-94-8422-S issued by the General Services Administration.

We dismiss the protest as untimely because it challenges an alleged impropriety in the solicitation that should have been protested before bid opening. In this case, Achievement requested clarification of the specification on August 19, 1994. On August 24, the agency informed Achievement that the specifications would not be changed, and on September 13, proceeded with bid opening. On November 14, Achievement received notification of the award to another contractor.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1); Manatts, Inc., B-237532, Feb. 16, 1990, 90-1 CPD ¶ 287. Our Regulations further provide that 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 (closing occurring 1 day following filing of agency-level protest constitutes initial adverse agency action). Therefore, even if we were to view Achievement's August 19 request for clarification to be an agency-level protest, bid opening on September 13 would have been adverse action on that protest, requiring any subsequent protest here to have been filed within 10 working days thereafter. Accordingly, the instant protest filed after award would be untimely in any event.

  
Ronald Berger  
Associate General Counsel