

DOCUMENT RESUME

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[Validity of Determination That Technical Proposal Qualified for Discussions under Step One of a Two-Step Procurement]. A-191871. November 30, 1978. 15 pp.

Decision re: Guardian Electric Mfg. Co.; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Bendix Corp.; Department of the Army.
Authority: Freedom of Information Act (5 U.S.C. 552). Small Business Act. 55 Comp. Gen. 267. 51 Comp. Gen. 85. 50 Comp. Gen. 346. 54 Comp. Gen. 612. 51 Comp. Gen. 372. 51 Comp. Gen. 621. 56 Comp. Gen. 675. 4 C.F.R. 20. Defense Acquisition Regulation 2-503.1. B-189661 (1978). B-189071 (1977). B-185166 (1976). B-183664 (1975). E-186002 (1976). B-181779 (1974). B-184654 (1976). E-190020 (1978). B-186404 (1976). B-184369 (1975).

The protester alleged that its competitor's technical proposal was unacceptable under step one of a two-step procurement. The protest was timely since the protester did not know the specific grounds of the protest until after step two bid opening. The contracting officer's acceptance of a technical proposal submitted under step one was a proper exercise of discretion since the proposal was determined to be susceptible of being made acceptable. Specification changes made to enhance competition and which reflected the agency's actual minimum needs were not improper merely because they were advantageous to one offerer. (Author/SC)

DECISION*J. Hoover*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

8466

FILE: B-191871

DATE: November 30, 1978

MATTER OF: Guardian Electric Manufacturing Company

DIGEST:

1. While protester might have known prior to opening of step-two bids that competitor's technical proposal was determined acceptable under step one of two-step procurement, protest alleging unacceptability of competitor's technical proposal filed after bid opening is timely since protester did not know specific grounds of protest until after bid opening. Protester is not required to file Freedom of Information Act request to discover grounds for protest before step-two bid opening.
2. Agency is not obligated to reject step-one technical proposal which does not include material required by solicitation, since applicable regulations permit agency to request omitted information and to determine acceptability of proposal after submission of that information.
3. Contracting officer's acceptance of technical proposal submitted under first step of two-step procurement was proper exercise of discretion since proposal was determined susceptible of being made acceptable and there is no evidence that determination was unreasonable or made in bad faith. In determining acceptability of proposal, contracting officer may consider all circumstances, including magnitude of changes needed as well as whether Government time and effort, and accompanying technical risk can be justified by resulting increase in price competition.

4. Step one of two-step procurement is qualifying rather than competitive phase which contemplates qualification of as many sources as possible.
5. Allegation that agency transfused to other offeror protester's solutions to problems relating to accessibility and material is without merit as agency has denied telling competitor of protester's solutions and record shows that protester's accessibility solution was not unique and material it intended to use was known to agency and to industry prior to issuance of RFTP.
6. Specification changes made to enhance competition and which reflect agency's actual minimum needs are not improper merely because they were advantageous to one offeror.
7. Decision as to whether particular procurement should be set aside for small business is within discretion of contracting agency.
8. Protest allegation first raised at bid protest conference is untimely since it was neither made within 10 working days after basis of protest was known nor related to issues timely filed.

This protest primarily involves the validity of the Army's determination that Bendix Corporation's (Bendix) technical proposal was susceptible of being made acceptable, and therefore qualified for discussions under step one of a two-step formally advertised procurement.

Background

On February 1, 1978, the United States Army Aviation Research and Development Command (Army) issued a Request for Technical Proposals (RFTP) as the first step of a two-step formally advertised procurement. The RFTP requested technical proposals for two configurations of a grip assembly for use in Black Hawk and Cobra Army helicopters. The pilot controls the aircraft through these grip handle assemblies which are located at the

end of the helicopter's control "stick." In addition to providing a grasping surface, the grip contains several switch assemblies which control important functions like communications and gun firing.

By the amended closing date of March 6, technical proposals were received from Bendix and Guardian Electric Manufacturing Company (Guardian), the protester. The technical proposals were evaluated and discussions held with both firms. Also during the evaluation period, four amendments were issued to the RFTP which, among other things, changed some of the switch assembly requirements, relaxed some tolerances and clarified the specifications.

On April 14, 1978, after the Army determined that both proposals were technically acceptable, a step-two invitation for bids (IFB) was issued to each firm with bid opening scheduled for May 1. Bendix submitted the low bid at \$459,746.29, while Guardian bid \$467,588.00. Guardian then filed a request to the Army under the Freedom of Information Act, 5 U.S.C. 552 (1976), for access to the Bendix proposal. Upon receiving the information, Guardian filed the instant protest. We have received and considered submissions from Guardian, the Army and Bendix in connection with this matter.

Basically, it is Guardian's position that Bendix's proposal, as initially submitted, was nonresponsive as it was not in the required format and technically unacceptable since Bendix proposed a grip to be manufactured out of a butyrate material, and the proposed design did not provide for access to the switch assemblies. Instead of rejecting Bendix's proposal, the protester complains, the Army held discussions with Bendix and transfused Guardian's solutions to the access and material problems to Bendix, thereby enabling that firm to prepare a second proposal which could meet the Army's requirements. In addition, Guardian contends that the procurement should have been set aside for small business and alleges that even with the Army's "help," the final Bendix proposal is unacceptable because it contains an ambiguity regarding the material to be used in manufacturing the grip. All this leads Guardian to the conclusion that it has submitted the only technically acceptable proposal and that the Bendix proposal should have been rejected and sole-source negotiations conducted with it.

Timeliness of the Protest

The Army argues that Guardian's protest, which was not filed until after bids were opened on May 1, is untimely under our Bid Protest Procedures. It is the agency's view that when the step-two IFB was issued on April 14 Guardian should have known that the Bendix technical proposal, which constituted Guardian's only competition, was determined to be acceptable and should have taken steps to obtain the information needed to protest the agency's action. It appears that the Army favors a rule in two-step procurements that would require a protester to request access to a competitor's proposal or other information within 10 days from the date it knew that the proposal was determined to be acceptable under step one.

Although Guardian may have been aware that Bendix's technical proposal had been accepted when it was not approached for negotiations pursuant to Defense Acquisition Regulation (DAR) § 2-503.1(h) (1976 ed.) and the IFB was issued, it is significant that the agency did not issue any public notice that indicated Bendix could participate in step two and that the Bendix proposal was not available for public inspection. Thus, at that time Guardian could not have been aware of the specific grounds of protest without filing some type of request for information with the agency.

Our Bid Protest Procedures do not provide any specific time limit for filing such requests and we do not believe that the agency's proposed rule is appropriate for use in two-step procurements. We held in Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176, that our Office will consider protests against agency action under step one of a two-step procurement even if filed after bid opening under step two as long as the protester does not have a prior opportunity to know the specific basis of protest. In Hyster Company, supra, as in this case, the protester did not request information concerning a competitor's technical proposal until after bid opening under the second step. We believe that it would be disruptive of the two-step procurement process, which does not provide for public availability of technical proposals (see DAR § 2-503.1(c)(i)), to require protesters to attempt to obtain information regarding competing technical proposals during the

procurement process prior to the opening of step-two bids. This is not inconsistent with our holdings in Access Corporation, B-189661, February 3, 1978, 78-1 CPD 100, and Ingersoll-Rand Company, B-189071, October 3, 1977, 77-2 CPD 254, where arguments raised after bid opening under step two were determined untimely because in both Access and Ingersoll-Rand the protesters were or should have been aware of the specific bases of protest at the close of step one.

Responsiveness and Acceptability of Bendix Proposal

Guardian contends that Bendix's technical proposal, as initially submitted, was "materially nonresponsive" to the specific requirements of the RFTP as well as technically unacceptable and should have been rejected pursuant to DAR § 2-503.1(e) which states that any proposal which modifies or fails to conform to the essential requirements or specifications of the RFTP shall be considered nonresponsive and categorized as unacceptable. More specifically, Guardian argues that the Bendix proposal was nonresponsive because it was not accompanied by a separate, bound, detailed and contractually binding specification as required by paragraph 6b(1) of the RFTP and did not include detailed engineering drawings and narrative descriptions of the design approach and of its proficiency in grip design and manufacture as required by RFTP paragraphs 6b(2), (3) and (4).

The Army acknowledges that the Bendix proposal, as originally submitted, lacked the items listed by the protester. However, it takes the view that these items were in the nature of administrative details and did not prevent the Bendix proposal from being classified under DAR § 2-503.1(e)(ii) as reasonably susceptible of being made acceptable with additional information which would not change the basic proposal.

It is clear that these deficiencies could be cured by the submission of additional information. Thus, under DAR § 2-503.1(e), the agency was not obligated to reject the Bendix proposal and properly could request that Bendix submit the missing material for subsequent evaluation. See, e.g., 51 Comp. Gen. 85 (1971).

Similarly, we do not believe that the technical deficiencies in Bendix's initial proposal required rejection of that proposal. The purchase description contained in the RFTP provides:

"3.3.1 Design and Construction * * * The head modules shall be removable for access to the switches and wiring connections contained therein. A means shall also be provided for removing and replacing switches in the main body section. * * *

"3.5 Maintainability. The grip assembly is designed to permit ease of maintenance at field level, including replacement of switches, wiring and associated parts without damage, and without the use of special tools and techniques."

In response to this requirement Bendix proposed to mold the grip body without a removable section for access to three of the switch assemblies. Instead Bendix indicated that switches could be removed by heating the grip and pulling them out with a suitable tool.

The Army was not satisfied with this approach and informed Bendix of its views during discussions held with Bendix in mid-March. Bendix then revised its design to include an access panel in front of the grip body below the switches.

The purchase description in the RFTP did not require that the grips be molded of a particular material, but specified that the grips must meet certain criteria regarding weight, strength, resistance to moisture, etc. Bendix, in its initial proposal, indicated that it intended to mold its grip from a butyrate material. It was the Army's view that this material would not meet the specified performance criteria and Bendix was so informed. Bendix then altered its design to provide for the use of glass filled polypropylene.

Guardian asserts that Bendix's initial proposal was technically unacceptable because, as indicated above, it did not provide for access to the switch assemblies as required by the RFTP and proposed to mold the grip from butyrate which is an unacceptable material.

Since these deficiencies go to the very heart of Bendix's proposed grip design and could not be cured without a major proposal rewrite and redesign, Guardian urges that the proposal could not be classified as reasonably susceptible of being made acceptable pursuant to DAR § 2-503.1(e)(ii) but should have been rejected as unacceptable pursuant to DAR § 2-503.1(e)(iii).

In support of its position Guardian points to the evaluation record where it is indicated that the initial Bendix proposal was found to be "unacceptable" because of the proposed use of butyrate and the lack of accessibility. Further, in this connection Guardian notes that evaluation memoranda which concern the classification of Bendix's proposal "as susceptible of being made acceptable" appear to deal only with "administrative deficiencies" which pertain to the form of the proposal rather than the technical deficiencies relating to the use of butyrate and lack of accessibility.

Here Guardian notes that there are only three categories under DAR § 2-503.1(e); namely, (i) acceptable, (ii) susceptible of being made acceptable, and (iii) unacceptable. Thus, Guardian concludes that since the record shows that the Army actually determined that the Bendix proposal was "unacceptable", DAR § 2-503.1(e)(iii) mandated its rejection.

Although Guardian is correct in its observations regarding the use of the term "unacceptable" in the evaluation memoranda we do not believe agency technical personnel used the term to indicate that the total proposal was unacceptable. The record shows that they merely considered Bendix's approach to the material to be used and to accessibility to be unacceptable. Even though the contracting officer's memorandum for record does not specifically list the technical deficiencies in the Bendix proposal, we cannot conclude that he was unaware of the technical problems when the determination to hold discussions with Bendix was made. It is clear from the record and the actions of the agency that although the Bendix proposal was unacceptable in certain respects, the initial proposal, as an entity, was considered susceptible of being made acceptable under DAR § 2-503.1(e)(ii) and qualified for discussions.

The two-step formal advertising procedure described in DAR § 2-501, et seq. combines the benefits of competitive advertising with the flexibility of negotiation. Page Airways, B-185166, July 29, 1976, 76-2 CPD 95, and cases cited therein. The first step of the procedure contemplates the qualification of as many technical proposals as possible under negotiation. 50 Comp. Gen. 346 (1970). This procedure requires that first step technical proposals comply with the basic requirements of the specification, but does not require compliance with all specification details. 51 Comp. Gen. 85, supra. Our Office has held that questions as to whether technical proposals submitted under two-step procedures are deficient and whether they are reasonably susceptible of being made acceptable without major revision are basically matters requiring the judgment and expertise of technically qualified personnel. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44. We will ordinarily accept the considered judgment of the procuring agency's specialists and technicians as to the adequacy of a technical proposal, unless it is clearly shown that the agency action was erroneous, arbitrary, or not made in good faith. Coastal Mobile and Modular Corporation, B-183664, July 15, 1975, 75-2 CPD 39.

In this instance Guardian argues that the Army's action in not rejecting the initial Bendix proposal was arbitrary and unreasonable. It is Guardian's view that the defects regarding material and accessibility could not be rectified by the submission of additional data or clarifying language. Rather, Guardian insists that these defects concerned essential performance characteristics and that their correction required a major redesign.

There is no question that the changes required to make the Bendix proposal acceptable in the areas of material and accessibility were of a substantial nature and did relate to the basic design offered by Bendix. However, we do not believe the agency is in every instance prevented from conducting discussions with an offeror whose proposed design is deficient in these respects. Here, although some changes in the grip design were needed to qualify Bendix for the step-two competition the agency reports that these changes did not represent a significant amount of effort or technical risk for the

Government. It is our view that the determination of whether changes needed to qualify a proposal under step one of a two-step procurement are so basic as to require it to be rejected is one which must be made in light of all the facts and circumstances. The matters to be considered are not just related to the magnitude of the changes versus the basic design of the proposal but whether those changes and the time and effort needed to effectuate them as well as the accompanying technical risk can be justified by the resulting increase in competition under step two.

In view of the fact that price competition would have been eliminated ((DAR § 2-503.1(e) repeatedly expresses concern over the preservation of price competition) if the Bendix proposal were rejected and since the agency viewed technical risk as slight, we do not believe that the Army abused its discretion in judging Bendix's proposal as susceptible of being made acceptable despite its technical shortcomings. See generally 51 Comp. Gen. 372 (1971). Nor do we share Guardian's concern over the fairness of permitting Bendix to improve its weaker proposal. Step one of a two-step procurement is a qualifying rather than competitive phase which contemplates the qualification of as many sources as possible. 50 Comp. Gen. 346 supra; 51 Comp. Gen. 372, supra. Proposals are classified as either acceptable or unacceptable on their own merits and are not in competition with other proposals submitted. Struthers Electronics Corporation, B-186002, September 1, 1976, 76-2 CPD 231.

Technical Transfusion

Guardian maintains that its solutions to the problems of accessibility and material were improperly transfused to Bendix by the Army during discussions. In support of its position Guardian directs our attention to Procurement Consultants, Incorporated, B-181779, December 10, 1974, 74-2 CPD 321, where we defined technical transfusion as the conveying, either directly or indirectly, during negotiations of a better approach or solution to a problem by the Government negotiators.

In regard to the accessibility problem, Guardian alleges that the Army directed Bendix to provide an access cover which was functionally similar to that

proposed by the protester. Although Guardian does not contend that the use of an access cover for switch removal is unique, it expresses "suspicion" that, given the number of options available to solve this problem, Guardian would "choose" this option after discussion with Army personnel. Further, Guardian notes that Bendix in its initial proposal suggested that if its design, which required the use of heat guns and clamps for switch removal was unacceptable, it would add a removable section to the body. Thus, Guardian concludes Bendix had no intention of using an access cover and only decided to do so at the behest of the Army.

There is no evidence in the record to indicate that Bendix was ever told by the Army to use an access cover. Bendix specifically denies it was so advised and the Army technical evaluator specifically denies mentioning anything to Bendix regarding an access cover. In addition, the Army has produced affidavits from its entire evaluation team which deny that any information from Guardian's proposal was given to Bendix.

Further, Guardian admits that there is nothing unique or special about the use of an access door and Guardian even concedes that Bendix's proposed use of the access cover is not the same as Guardian's design. Thus there does not appear to have been any transfusion in regard to the use of an access cover.

In connection with the choice of material from which the grip is to be molded, Guardian claims that its proposed use of glass filled polypropylene was improperly transfused to Bendix. In this instance Guardian points to a March 16, 1978, letter to Bendix where the Army informs that firm that its proposed use of butyrate is not acceptable and states "* * * possibilities inherently narrow down to a few engineering quality glass filled thermoplastics." It is further noted that Bendix subsequently altered its proposal to provide for the use of glass filled polypropylene. The Army replies that the use of glass filled thermoplastics was well known in the industry prior to the issuance of the RFTP. In fact, the Army has submitted a transcript of a talk given in 1976 by an official of Guardian concerning the use of such material in grip manufacture. The agency also directs our attention to the fact that it only suggested the use of glass filled thermoplastics, rather

than polypropylene, the specific type of glass filled thermoplastic used by Guardian.

The protester counters that there is no requirement that transfused information be of a proprietary nature and argues that information disclosed to the public prior to the negotiation still may not be transfused from one offeror to another during negotiation.

We do not believe the statements made by agency personnel regarding the use of "glass filled thermoplastics" constitute technical transfusion. This information given to Bendix was, by the admission of all parties, publicly available. Further, the statements by agency evaluators were general in nature in that they pertained to a class of materials, "glass filled thermoplastics", which could be used. They did not convey Guardian's particular solution, the use of glass filled polypropylene, to Bendix. Technical transfusion implies that an approach or solution is taken from one offeror's proposal and given to another offeror. 51 Comp. Gen. 621 (1972); Applied Management Sciences, Inc., B-184654, February 18, 1976, 76-1 CPD 111. In this instance, where the record indicates that the Army evaluators were aware of the use of thermoplastics in grip manufacture independently of and prior to the submission of Guardian's proposal and contains affidavits from the involved Army employees which state that no information from the Guardian proposal was given to Bendix, we are unable to conclude that the agency's suggestion that Bendix could use glass filled thermoplastics constitutes transfusion of Guardian's proposed approach.

Specification Changes

Guardian complains that the Army revised its specifications and relaxed its requirements as an improper inducement for Bendix to remain in the competition. In this regard the protester notes that despite the Army's initial misgivings, Bendix was able to convince the Army to issue amendments to the RFTP altering the requirements for some of the switch assemblies. It is Guardian's view that these changes were not necessary nor in the Government's best interest, but were solely an accommodation to Bendix. It is the agency's position, however, and the record indicates, that these amendments were issued to add new supply sources for

the switches and thus to enhance competition. Accordingly, since the revised specifications appear to reflect actual agency needs and provide for a broader competitive base, we do not find their use to be improper merely because the result was advantageous to Bendix. Consequently, we have no basis to object to the agency's amending the specifications.

Small Business Set-Aside

Guardian contends that it has discovered an irregularity in the agency's determination that this procurement should not be a small business set-aside. The protester states that in reviewing the documents included in the agency's report submitted in connection with the protest it noted that although the contracting officer concluded that adequate small business sources were not known, the file reveals that of 15 firms on the proposed bidders list, 12 were small businesses. The agency responds that its determination was made according to the applicable regulations and was concurred in by the Small Business Administration representative.

We think it is important to note that the presence of a number of small business firms on a proposed bidders list, alone, is not an assurance of reasonable competition. For example, of the 23 firms solicited for this procurement, two responded and only one, Guardian, was a small business. In any event, we have long held that while it is the policy of the Government to award a fair proportion of its total purchases to small business, there is nothing in the Small Business Act or the implementing regulations which mandates that any particular procurement be set aside for small business. The decision whether a procurement should be set aside is within the authority and discretion of the contracting agency. General Electrodynamics Corporation, B-190020, January 31, 1978, 78-1 CPD 78; See Kinnett Dairies, Inc. v. Farrow, 580 F. 2d 1260 (5th Cir. 1978).

Alleged Ambiguity of Bendix Proposal

During the conference held in this Office in connection with the protest on August 22, 1978, Guardian first raised a question regarding a possible ambiguity

in Bendix's final proposal. Guardian directed our attention to the drawings submitted with the Bendix proposal which specify that the grip will be molded of "PPO Glass Filled Polypropylene." Guardian states that there is no such substance as "PPO Glass Filled Polypropylene." Rather there is a material known as polyphenylene oxide (PPO) and a material known as polypropylene (PP). These materials have different characteristics, according to the protester. One may be acceptable while the other may not. Thus, Guardian concludes the Army is confused as to what is being offered and has arbitrarily accepted a proposal which contains a patent ambiguity in a critical design characteristic.

The Army denies that the ambiguity is of any significance and replies that this allegation is untimely raised. It is the agency's view that Guardian should have been aware of the alleged ambiguity in the Bendix drawings sometime soon after May 5, 1978, when the protester was permitted to inspect the Bendix proposal. Guardian maintains that this allegation is merely additional evidence to support its earlier timely raised contentions as to the unacceptability of Bendix proposal.

Guardian attempts to relate the "PP vs. PPO" issue to its earlier contention regarding the proportion of glass to plastic to be used by Bendix. This issue was spawned by an Army memorandum included in the agency's protest report which incorrectly stated that Bendix intended to use a polypropylene material containing 55 percent glass. The Army has subsequently admitted that the statement in the memorandum was erroneous and no evidence exists in the Bendix proposal or the evaluation record to substantiate the statement. Bendix maintains that it never intended to offer material with such a glass to plastic ratio. Consequently, Guardian's argument that such a proportion of glass to plastic would not meet the Army's needs was rendered moot.

Further, the protester explains that it set forth its suspicion about the vague material specification in its May 26 protest submission but could not explore the issue until the Army filed its protest report. Apparently, Guardian refers to the following statement on page 8 of its May 26 submission:

"In its second proposal, Bendix retreated from its intended use of butyrate and instead proposed to mold the grips out of either PPO (polyphenylene oxide) or glass-filled polypropylene."

This statement appears to be a mere statement of fact. Nowhere in the submission is there an indication that Guardian viewed this use of material as improper or that such use was to be a ground of protest. Since Guardian had been provided the Bendix proposal, which included the drawings with the disputed notation, prior to filing its protest we fail to understand why Guardian would need the protest report to "explore this issue." As far as we can tell the report makes no mention (other than that included in the Bendix drawing) of the use of "PP vs. PPO" as the material from which the grips would be molded.

As a general rule, we have viewed the timeliness of specific grounds of protest raised after the filing of a timely initial general protest as dependent upon the relationship the later-raised bases bear to the initial protest. See Kappa Systems, Inc., 56 Comp. Gen. 675 (1977), 77-1 CPD 412; Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412. Where the later bases have presented new and independent grounds for protest, we have considered that they must independently satisfy the timeliness criteria of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978). See State Equipment Division of Secorp National, Inc., B-186404, September 22, 1976, 76-2 CPD 270; Consolidated Airborne Systems, Inc., B-184369, October 21, 1975, 75-2 CPD 247. Conversely, where the later bases have merely provided additional support for earlier timely raised objections, we have considered these additional arguments in our evaluation of the protest. Kappa Systems, Inc., *supra*. In this connection, our Bid Protest Procedures provide:


"[b] (2) * * * bid protests shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2(b)(2) (1978).

We do not believe it is reasonable to conclude that the protester's "PP vs. PPO" argument provided support for its position regarding the glass to plastic ratio of Bendix's material. The fact that Bendix could supply either PP or PPO as a material has nothing whatever to do with the ratio of glass to plastic in a particular material. In fact, Guardian's glass to plastic ratio argument, which has been rendered moot, was based on the premise that PP would be used. Also the basis for Guardian's "PP vs PPO" contention was available to it long before the basis for its glass-to-plastic argument became available in the protest report.

Similarly, we see no relation to Guardian's complaint that the agency is accepting an ambiguous proposal and an earlier reference in the protester's May 26 submission that Bendix proposed to use "PPO (polyphenylene oxide) or glass-filled polypropylene" in a factual statement which did not indicate in any manner that it constituted a basis for protest.

The information needed for Guardian to set forth its position relating to the alleged ambiguity was available to it in early May, more than 10 days prior to the date the issue was raised on August 22. Consequently, we must conclude that this basis of protest is untimely and need not be considered.

The protest is denied.


Deputy Comptroller General
of the United States