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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-187894**

**DATE: December 21, 1976**

**MATTER OF: R & D Machine, Inc.**

**DIGEST:**

Protest filed after time for receipt of initial proposals alleging that specification is unduly restrictive in untimely.

R & D Machine, Inc. (R & D) protests as restrictive the delivery schedule required by the Naval Supply Systems Command in RFP NO0140-76-R-1852, issued by the Naval Regional Procurement Office, Philadelphia, Pennsylvania (Navy). R & D states that the supplies to be purchased require the use of non-stock material, and that as a result, the requirement for delivery of the first units within 60 days favors previous large business suppliers to the disadvantage of small businesses which may wish to participate in the procurement.

It appears that R & D submitted an initial proposal, departing from the required delivery terms. The Navy has advised R & D that departure from the mandated delivery schedule would not be acceptable, if retained in its best and final offer.

As provided in § 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), a protest based upon an alleged impropriety in any type of solicitation, which is apparent prior to the closing date for receipt of initial proposals, must be filed "prior to \* \* \* the closing date for receipt of initial proposals." Constantine N. Polites & Co., B-187721, November 12, 1976, 76-2 CPD \_\_\_\_\_.

The protester indicates that it contacted Navy procurement personnel, prior to the closing date for the receipt of initial proposals, and that it was led to believe that it should submit an offer. The Navy, however, advises that no protest concerning the delivery schedule was received prior to submission of initial proposals and it does not appear that the firm was dissuaded from submitting a timely protest. In any event, even if Navy personnel

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indicated that the offer would be considered, such action imports nothing more than an indication that the procuring activity would consider the proposal, along with others, rather than a commitment to relax its requirements. In this regard, exceptions taken in a proposal, born of the protester's expectation that the procuring activity will relax its requirements, do not constitute or preserve a protest within the meaning of our Bid Protest Procedures. Raytheon Co., B-184375, April 29, 1976, 76-1 CPD 288.

Since the protest was not filed prior to the closing date for receipt of initial proposals, the protest is untimely and will not be considered by our Office.

*Milton Aschew*  
for Paul G. Dembling  
General Counsel