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PL-1 Protest

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

[Untimely Protest of Bid Rejection]

FILE: B-197853 **DATE:** March 17, 1980

MATTER OF: Peterson-Tucker, Inc.

DIGEST: Protest concerning rejection of bid which is not filed with GAO within 10 days after notice from procuring activity setting forth reasons for rejection and notice of award, assuming timely protest to agency, is untimely under GAO Bid Protest Procedures.

Peterson-Tucker, Inc. (PTI), protests the Department of the Air Force's (Air Force) rejection of its bid under invitation for bids (IFB) No. F45613-79-B-0035 issued by Fairchild Air Force Base, Washington, for rehabilitation of its dining facility. The protest is dismissed as untimely filed for the reasons discussed below.

The IFB, issued on August 3, 1979, was initially amended to extend the bid opening date to September 20, 1979, and again on September 6, 1979, to incorporate the following clause:

> "Item 1a on Bidding Schedules No. 1 and No. 2 is subject to a Statutory Cost Limitation of $100,000."

By letter of September 27, 1979, the Air Force advised PTI that its bid was rejected as nonresponsive because its bid for item 1a exceeded the prescribed limitation. The Air Force made the award on September 28, 1979, and advised PTI of this on October 1, 1979. We received PTI's January 30 protest letter on February 21, 1980.

Our Bid Protest Procedures, 4 C.F.R. part 20 (1979), provide that a protest, to be timely, must be filed no later than 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2. Because PTI was advised that its bid was nonresponsive, and the reason therefor, on September 27 and of the award on October 1, it

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should have known the basis for protest at that time, requiring the filing of a protest with the agency or our Office within 10 days. Schreck Industries, Inc., B-194818, June 13, 1979, 79-1 CPD 420; Weather Measure Corporation, B-194230, April 10, 1979, 79-1 CPD 251.

In its letter of January 30, 1980, to our Office protesting the rejection of its bid, PTI indicates that it discussed this matter with the base contracting officer at Fairchild Air Force Base. The contracting officer advised that it was his position that the bid was nonresponsive and, therefore, he was correct in his award to the other bidder. It appears this conversation took place prior to the award. Even if this conversation was intended as a protest to the agency, the October 1 notice of award constituted denial of the protest to the agency. Such action required the filing of a protest with our Office within 10 working days. Shiffer Corporation, B-193652, January 25, 1979, 79-1 CPD 54. PTI's protest filed with our Office on February 21, 1980, is untimely under our Bid Protest Procedures and not for consideration on the merits.

The protest is dismissed.

Harry R. Van Cleve

for Milton J. Socolar
General Counsel