

**DECISION**



*Martin*  
15103 PLII  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-198219

DATE: October 8, 1980

MATTER OF: Security Assistance Forces & Equipment  
International, Inc.

**DIGEST:**

- Have Been*
1. [Protest contending two solicitations should be combined] is untimely under Bid Protest Procedures where protest was not received by GAO until after closing date for receipt of initial proposals.
  2. Protest contending two solicitations should be combined is untimely where protest was initially filed with agency before proposal due date but protest to GAO was filed more than 10 days after initial adverse agency action on protest to agency (receipt of proposals without amending solicitation).

Security Assistance Forces & Equipment International, Inc. (SAFE) protests an award under request for quotations (RFQ) No. DAJA76-80-Q-0194, dated January 25, 1980 and issued by the Frankfort Area Contracting Office, U.S. Army Contracting Agency, Europe (USACAE) for replacement of a fan and waste air duct in an Air Force kitchen. SAFE's protest, which was received in this Office on March 21, 1980, objects to the contract award while its protest purportedly was pending in this Office and contends the solicitation should have been combined with request for proposals (RFP) No. DAJA76-80-R-0022, also dated January 25, 1980 and issued by USACAE, calling for installation of a carbon monoxide fire extinguishing system in the same building. For reasons discussed below, this protest is dismissed.

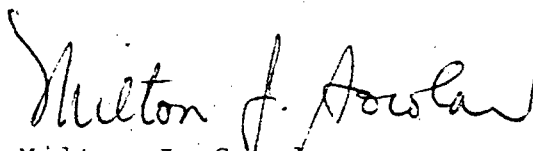
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By letter of February 4, SAFE protested to USACAE with respect to both DAJA76-80-R-0022 and DAJA76-80-Q-0194 on grounds the two procurements should be combined for safety and compatibility reasons, that the carbon monoxide system required by DAJA76-80-R-0022 was hazardous and the requirement that installation of the fire extinguisher system meet German building codes precluded the use of less costly American-made equipment. Although this letter was addressed to USACAE, it requested that the Comptroller General rule on the issues presented. However, the copy which the letter indicated was being sent to our Office was never received from SAFE and came to our attention only upon our receipt of the Army's protest report.

After reviewing SAFE's letter of February 4, USACAE determined that no good reason existed for requiring the fire extinguishing system and the fan and exhaust system to be installed by the same contractor or at the same time and that compliance with German building codes did not preclude participation by U.S. firms. It also determined, however, that SAFE was correct in that use of carbon monoxide fire extinguishing systems was not in accord with Air Force policy, that the specifications should be changed to require dry chemical extinguishers as advocated by SAFE and that the solicitation should therefore be canceled and reissued after revision of the specifications. By letter of March 10, SAFE was informed that USACAE had confirmed that the two procurements could be independently performed and that award for the fan and exhaust system under DAJA76-80-Q-0194 had been made to another firm. By letter of March 21, SAFE was informed that DAJA76-80-R-0022 had been canceled and a new solicitation would be sent to SAFE when it was issued.

The Army challenges the adequacy of SAFE's letter of February 4 as a protest to either the agency or our Office and contends SAFE's letter of March 17 to this Office is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2 (1980). We agree. Protests based upon alleged improprieties apparent on the face of the solicitation must be filed prior to the closing date for receipt of initial proposals, which in this case was February 28. As we have indicated, no protest was docketed with our Office by that date. Even if SAFE's letter of February 4 is regarded as a protest to the agency, its subsequent protest of March 17 to our Office

is untimely. While section 20.2(a) of our Procedures encourages a protester to file its initial protest with the agency, it also requires that any subsequent protest to our Office be filed within ten days of the initial adverse agency action on the protest. In this case, the agency's receipt of initial proposals without amending the solicitation to combine the two procurements constituted initial agency action denying the protest. Security Assistance Forces and Equipment International, Inc., B-193695, June 6, 1980, 80-1 CPD 398.

  
Milton J. Socolar  
General Counsel