

**DECISION**



*Golden*  
*17527*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-202137

DATE: March 30, 1981

MATTER OF: Crown Laundry and Cleaners

**DIGEST:**

1. Protest based upon alleged improprieties in solicitation not filed prior to bid opening is untimely filed under our Bid Protest Procedures and is not for consideration on merits.
2. Assuming oral protest to agency prior to bid opening concerning alleged improprieties in solicitation, opening of bids without taking any action to respond to protester's concerns by modifying solicitation constitutes initial adverse agency action. Therefore, subsequent protest to GAO more than 10 days after bid opening date is untimely and not for consideration on merits.

Crown Laundry and Cleaners (Crown) protests any award under solicitation No. DAK57-81-B-0003, for laundry services at Fort Lewis, Washington, issued by the Department of the Army (Army). The procurement was made in accordance with the Office of Management and Budget Circular A-76. Crown contends that its own prebid survey of the existing laundry facilities shows that the solicitation inaccurately stated the Government's requirements, adversely affecting its ability to formulate a competitive bid.

These allegations of inaccurate data contained in the solicitation relate to alleged improprieties in the solicitation which were apparent prior to the bid opening.

Bid opening was on January 30, 1981, and the protest was not filed (received in our Office) until

**[Contract Award Protest]**

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March 9, 1981. Therefore, the issue raised is untimely and not for consideration on the merits.

Crown argues that it made an oral protest concerning the alleged improprieties in the solicitation to the agency on January 27, 1980, prior to bid opening, followed by a protest in writing on February 5, 1981. The Army denies that Crown made an oral protest and contends that the February 5, 1981, letter was untimely filed with the agency and, therefore, cannot now be considered by this Office.

If, as the protester asserts, it orally protested the alleged solicitation improprieties on January 27, 1980, the protest to this Office would still be untimely filed.

Under our Bid Protest Procedures, when a protest is initially filed with the contracting agency, any subsequent protest to our Office must be filed within 10 days of the protester's knowledge of initial adverse agency action on its protest. 4 C.F.R. § 20.2(a) (1980). The opening of bids on January 30, 1981, without responding to Crown's concerns by modifying the solicitation constituted initial adverse agency action. McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD 163; Professional Computer Service--Reconsideration, B-197450.2, March 6, 1980, 80-1 CPD 179. Again, we did not receive the Crown protest until March 9, 1981, or more than 10 working days after bid opening.

If, as the agency contends, Crown's initial protest to the agency was the February 5, 1981, letter, this protest was also untimely filed. Under our Bid Protest Procedures, the rule that protests of improprieties apparent in the solicitation must be filed prior to bid opening applies to protests initially filed with the agency as well as to the GAO. 4 C.F.R. § 20.2(a) (1980); Emerson Electric Co., B-184346, September 9, 1975, 75-2 CPD 141. Thus, the February 5, 1981, protest letter to the Army was untimely filed with the Army.

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The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel