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DECISION



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

FILE: B-206812

DATE: May 17, 1982

MATTER OF: Electronic Systems U.S.A., Inc.

DIGEST:

Where the contracting agency proceeds with bid opening as scheduled without taking any action in response to a protest, that action constitutes the initial adverse action from which the timeliness of a subsequent protest to GAO is measured.

Electronic Systems U.S.A., Inc. (Electronic), protests against the specifications in invitation for bids (IFB) No. N62467-82-B-0117 issued by the Naval Facilities Engineering Command (Navy) for automatic space temperature control systems at the Precision Measurement Equipment Laboratory, Keesler Air Force Base, Biloxi, Mississippi.

Electronic contends that amendment No. 0003 to the IFB, which requires that supervision and programming for the energy monitoring and control system be provided by Honeywell, Inc., is unduly restrictive of competition.

Upon review of the record, we find the protest to be untimely.

The amendment was issued on February 8, 1982. Electronic protested to the Navy on February 18, 1982, the date scheduled for bid opening. Notwithstanding the protest, the Navy opened bids as scheduled without further amending the IFB. By letter of March 15, 1982, the Navy denied Electronic's protest. Electronic's March 18 protest telegram was filed (received) with our Office on March 23, 1982.

Our Bid Protest Procedures require that, where a protest has been filed with the contracting agency, any subsequent protest to our Office be filed within 10 working days after the protester receives notice of the contracting agency's initial adverse action on

the protest, 4 C.F.R. § 21.2(a) (1981). The opening of bids as scheduled on February 18, 1982, constituted the Navy's initial action adverse to the protest, Bilson International, Inc., B-203523, March 8, 1982, 82-1 CPD 206. Such action requires the filing of a protest with our Office within 10 working days after the bid opening date--by March 4, 1982. Although the Navy's denial of Electronic's protest was also adverse to the protester, it was not the initial adverse action from which the timeliness of this protest must be measured. Gerald Laird, B-204382.4, November 23, 1981, 81-2 CPD 418.

Because Electronic's protest was not filed with our Office within the required period, it is untimely and will not be considered on the merits.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel