

**DECISION**



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

**FILE:** B-207307

**DATE:** July 28, 1982

**MATTER OF:** Kennametal, Inc.

**DIGEST:**

1. Protest that option quantity included in solicitation was too large is untimely, since it was filed after the closing date for receipt of initial proposals.
2. Protest that first article testing requirement was not waived is untimely, since it was filed more than 10 working days after the basis of the protest was known.
3. Protest that option was improperly exercised is untimely, since it was filed more than 10 working days after the protester was informed of the exercise of the option and the reasons for it. This issue does not fall under the significant issue exception to our timeliness rules because it is not a matter of widespread interest to the procurement community and it has been the subject of previous GAO decisions.

Kennametal, Inc. (Kennametal), protests the exercise of an option by the United States Army Armament Materiel Readiness Command (ARRCOM), Rock Island, Illinois, under contract No. DAAA09-81-C-0169.

We dismiss the protest because it is untimely.

Kennametal argues that the option quantity was too large and that the option was not exercised in accordance with regulations, in effect, making it an improper sole-source contract. Specifically, the protester alleges that ARRCOM artificially created a situation of urgency to justify the exercise of the option in lieu of conducting a competitive procurement. Kennametal also argues that ARRCOM should have waived the requirement for first article testing for its product in the original procurement.

Section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1982), requires protests of apparent solicitation defects to be filed prior to the closing date for receipt of proposals. The maximum amount of the option quantity was included in the original solicitation and should have been protested prior to the closing date. It was not and, therefore, was untimely filed.

Section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1982), requires protests of other than solicitation improprieties to be filed within 10 working days of when the protester knew or should have known of the basis for the protest. ARRCOM states in its report that a representative of Kennametal was informed of the exercise of the option and the reasons for it on April 9, 1982. Kennametal does not deny this. Yet its protest was not received until April 28, 1982, more than 10 working days later. Consequently, it is untimely and we will not consider it. Kennametal knew of ARRCOM's refusal to waive the requirement for first article testing approximately 1 year before filing the protest, so this ground too is untimely.

Kennametal implies that we should consider the allegations concerning the exercise of the option under our "significant issue" exception, 4 C.F.R. § 21.2(c) (1982). We stated in Sequoia Pacific Corporation, B-199583, January 7, 1981, 81-1 CPD 13, that:

"In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a matter of widespread interest or importance to the procurement community, see, e.g. Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225; Wyatt Lumber Company, B-196785, February 7, 1980, 80-1 CPD 108; Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159."

This exception must be strictly construed and sparingly used to prevent our timeliness rules from being rendered meaningless. The protest here does not fall within the exception. The propriety of the exercise of an option is not of widespread interest to the procurement community, and it has been the subject of a number of GAO decisions, such as Fraser-Volpe Corporation, B-193192, January 29, 1979, 79-1 CPD 60.

Protest dismissed.

*For* *J. H. Barclay Jr.*  
Harry R. Van Cleave  
Acting General Counsel