

DECISION



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

FILE: B-208798

DATE: September 27, 1982

MATTER OF: J. J. Broderick Company, Inc.

DIGEST:

Agency acceptance of proposals on scheduled date, without amendment of protested requirements, constitutes initial adverse agency action, and any protest to GAO must be filed within 10 days thereafter. Thus, protest filed with GAO 15 days after the closing date for receipt of proposals is untimely. Protester does not have option of waiting until it receives written denial of protest to contracting agency before protesting to GAO.

J. J. Broderick Company, Inc. (Broderick), protests the procurement of storage equipment under solicitation No. DAAG36-82-R-0043, issued by the Department of the Army (Army). We dismiss the protest as untimely.

By mailgram dated July 29, 1982, Broderick protested this procurement to the Army contracting officer alleging that the procurement was based on a defective analysis of the equipment required. The closing date for receipt of initial proposals under the solicitation was August 6, 1982. Broderick did not submit a proposal. The contracting officer never responded directly to the protest. Instead, Broderick's protest was referred to the Chief, Distribution Operations Division, DARCOM Packaging, Storage and Containerization Center, whose division is responsible for the definition of the Government's requirement contained in the solicitation. The division chief wrote to Broderick on August 19, 1982, advising that Broderick's comments on the requirements would be analyzed and considered, but not addressing directly the protested procurement. By letter dated August 23, 1982, to the Army, Broderick told the Army it intended to

protest to the General Accounting Office (GAO) unless the solicitation was canceled. On August 27, 1982, Broderick filed its protest with GAO.

Our Bid Protest Procedures require that in the case of a protest timely filed initially with the contracting agency, any subsequent protest to the GAO must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1982).

Here, Broderick filed a protest with the Army on July 29, 1982, and the Army's acceptance of proposals on August 6, 1982, without amendment of the protested requirements, constituted initial adverse agency action, and any protest to GAO should have been filed within 10 days thereafter. Broderick did not file its protest until 15 days after this initial adverse agency action and its protest to GAO is therefore untimely. J. J. Broderick Company, B-204506, November 23, 1981, 81-2 CPD 419. The fact that the protester continued to pursue its protest with the agency did not extend the time for protesting to GAO. Blakeslee Arpala Chapman, Inc., and Charles Stokes d/b/a C. Stokes Construction Company, B-206394, March 8, 1982, 82-1 CPD 213. In light of the initial adverse agency action, Broderick did not have the option of waiting until it received a written denial from the contracting officer. See American Telephone and Telegraph Co., B-200989, August 19, 1981, 81-2 CPD 157.

We dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel