

DECISION

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

McConnell
119665

FILE: B-208865

DATE: October 8, 1982

MATTER OF: Control Engineering Company

DIGEST:

An agency's acceptance of proposals on the scheduled closing date, without amending the solicitation as requested in a protest, constitutes initial adverse agency action on that protest, and thus a later protest filed with GAO on the 11th working day after the closing date is untimely under GAO's Bid Protest Procedures.

Control Engineering Company (CEC) protests provisions of solicitation No. DAAG36-82-R-0033, issued by the Department of the Army for an automated guided vehicle system. We dismiss the protest as untimely.

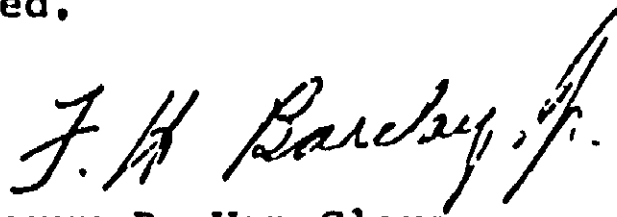
The solicitation established the closing date for receipt of proposals as August 16, 1982. On July 5, CEC filed a protest with the Army challenging portions of the solicitation. The firm subsequently withdrew its protest while the Army reviewed CEC's technical comments. On August 10, CEC refiled its protest with the Army, citing the Army's unsatisfactory response. Thereafter, the Army accepted proposals on August 16, as scheduled. CEC subsequently filed a protest with this Office by mailgram. Our time/date stamp shows that we received the mailgram on August 31.

Our Bid Protest Procedures require that, if a protest has been filed initially with the contracting agency, a subsequent protest to this Office be filed within 10 days of actual or constructive notice of adverse agency action on the initial protest.

4 C.F.R. § 21.2(a) (1982). The Army's acceptance of proposals on August 16, without amendment of the

solicitation as requested in CEC's August 10 protest, constituted initial administrative agency action. Although CEC's mailgram is dated August 26, it was not filed (received) in this Office until August 31, or 11 working days after the proposal closing date. In this respect, a mailgram is delivered to the addressee by ordinary first-class mail, so that its actual arrival date cannot be determined, and thus the time/date stamp controls. Linguistic Systems, Incorporated, 58 Comp. Gen. 403 (1979), 79-1 CPD 250. Therefore, CEC's protest is untimely and will not be considered. J. J. Broderick Company, Inc., B-208798, September 27, 1982, 82-2 CPD ____.

The protest is dismissed.

for 
Harry R. Van Cleve
Acting General Counsel