

DECISION

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

FILE: B-208858

DATE: November 30, 1982

MATTER OF: Logan Industries

DIGEST:

1. Where a firm initially protests an alleged specification defect to the contracting agency prior to bid opening, the opening of bids as scheduled without taking any action in response to the protest constitutes initial adverse agency action and subsequent protest to GAO not filed within 10 working days thereafter is untimely.
2. Protest challenging fairness of possible future solicitation specifications which does not concern any extant procurement is prematurely raised.

Logan Industries (Logan) protests against the specifications in invitation for bids (IFB) No. DLA400-82-B-4305 issued by the Defense Logistics Agency (DLA) for certain electrical box connectors. Logan contends that the IFB specifications called for connectors made of iron or steel with a zinc protective coating when DLA was willing to accept zinc die cast connectors as well and should have so specified.

Logan initially protested to DLA before bid opening, by letter of June 16, 1982, in which it also requested that DLA extend the bid opening date in order to permit Logan to submit a bid for die cast connectors. DLA took no action in response to Logan's protest and bids were opened as scheduled on June 22, 1982. Logan had submitted the highest bid, apparently based on iron connectors with zinc protective coating. Award was made to the third low responsive bidder.

Under our Bid Protest Procedures, 4 C.F.R. §§ 21.2(a) and (b)(1) (1982), protests concerning defects apparent in a solicitation must be filed with our Office or the contracting agency prior to bid opening. If a protest is filed initially with the contracting activity, we will consider a subsequent protest to our Office only if it is filed here within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. The fact that bid opening occurs, without the agency taking any action on a pending protest, is constructive notice that the contracting agency rejects the protest. Bilsom International, Inc., B-203523, March 8, 1982, 82-1 CPD 206. Here, Logan's protest was untimely filed in our Office on August 31, 1982, substantially more than 10 working days after bid opening.

Logan also asserts that the next time this requirement is solicited, the specifications should be changed to reflect the acceptability of a die cast connector. The protest is premature since it does not relate to any pending procurement. Arndt & Arndt, B-202349, March 23, 1981, 81-1 CPD 217; General Mills, Inc., B-199359, September 5, 1980, 80-2 CPD 179.

We dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel