

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

24000

FILE: B-208893**DATE:** January 10, 1983**MATTER OF:** Amray, Inc.**DIGEST:**

Potential subcontractor's protest of provisions in prime contractor's solicitation is untimely where the protest is filed with GAO after closing date for receipt of proposals. Protester's telegram to prime contractor sent prior to closing date, which merely notified prime contractor of an intent to protest to GAO, is not itself a protest.

Amray, Inc. protests request for proposals (RFP) No. P-332391 issued by The Bendix Corporation, Kansas City Division, for a scanning electron microscope. The solicitation was issued pursuant to Bendix' prime contract with the Department of Energy (DOE) for the operation of DOE's Kansas City Plant. Amray contends that the specifications included in the RFP are excessively restrictive and limit competition to only one firm.

This Office does not ordinarily review the award of subcontracts by Government prime contractors, except in limited circumstances. See Optimum Systems, Incorporated--Subcontract Protest, 54 Comp. Gen. 767 (1975), 75-1 CPD 166. An exception to our general policy is those awards made "for" DOE by prime management contractors which operate and manage DOE facilities. See Sono-Tek Corporation, 58 Comp. Gen. 26 (1978), 78-2 CPD 290. Since DOE's Kansas City Plant is operated "for" DOE by Bendix, the protest falls within our subcontract award review policy. It is, however, untimely.

After having the solicitation in its possession for approximately 1 month, Amray sent the following telegram to Bendix on August 25, 1982, 2 days prior to the August 27 closing date for receipt of proposals:

024358

"After careful review of [the] request for proposals * * * and the preliminary request for information * * * for a scanning electron microscope and related accessories, Amray has determined that the specifications are restrictive of competition. The specifications as written are restrictive and can only be met by one foreign manufacturer.

"Therefore, Amray is submitting a formal protest to the General Accounting Office to thoroughly review this procurement."

Amray, however, did not concurrently file a protest with our Office. Instead, by letter dated August 30, or 3 days after the closing date for receipt of proposals, Amray protested the restrictive nature of the specifications to our Office. We did not receive its letter until September 2--6 days after the closing date.

Under our Bid Protest Procedures, a protest of a solicitation deficiency must be filed, either with the contracting agency or our Office, prior to the closing date. See 4 C.F.R. § 21.2 (1982). Since Bendix was acting "for" DOE, both Bendix and DOE must be considered to be the "contracting agency" for purposes of this procurement and the timeliness provisions of our Procedures. See Blakeslee Arpaia Chapman, Inc. and Charles Stokes d/b/a C. Stokes Construction Company, B-206394, March 8, 1982, 82-1 CPD 213. We do not believe, however, that Amray's August 25 telegram can be considered a protest. The telegram evidenced no intent to protest to the contracting agency; rather, it was no more than a notification to the agency that Amray was submitting a protest to our Office. Despite that notification, however, Amray did not file a protest here until 6 days after the closing date.

Since we do not view the telegram of August 25 to Bendix as a protest, Amray's protest to our Office of September 2 is clearly untimely under our Procedures. Therefore, the protest is dismissed.

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