

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

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FILE: B-213332**DATE:** March 15, 1984**MATTER OF:** The Trane Company**DIGEST:**

Where firm initially protests alleged specification defects to contracting agency prior to bid opening, opening of bids is initial adverse agency action on protest and subsequent protest to GAO must be filed within 10 working days of protester's actual or constructive knowledge of that action.

The Trane Company (Trane) protests the award of a contract under invitation for bids (IFB) No. EMW-83-R-1332, issued by the Federal Emergency Management Agency (FEMA).

Trane contends that the specifications for the above invitation are restrictive because FEMA failed to (1) develop and use specifications and purchase descriptions that promote full and free competition, (2) specify its needs in a form that permitted maximum practicable competition, and (3) avoid restrictive features that limited acceptable bids to one bidder's products without establishing that those features were essential to its needs.

We dismiss the protest.

Under our Bid Protest Procedures, 4 C.F.R. §§ 21.2(a), 21.2(b)(1) (1983), protests concerning defects apparent in a solicitation must be filed with our Office or the contracting agency prior to bid opening. If, as in the present case, a protest is filed initially with the contracting activity, we will consider a subsequent protest to our Office only if it is filed within 10 working days after the protester has actual or constructive knowledge of initial adverse action by the contracting agency. The fact bid opening occurs is constructive notice that the contracting office rejects the protest. Baxter & Sons Elevator Co., Inc., B-210370, January 17, 1983, 83-1 CPD 54.

By letter of August 15, 1983, Trane complained that the specifications were restrictive and requested an opportunity to meet with FEMA's technical personnel to discuss the specifications. By letter of August 25, 1983, the contracting officer responded to Trane's letter advising Trane that FEMA had determined that the specifications would not be amended.

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By letter of August 29, 1983, Trane protested to FEMA. Bid opening was on September 1, 1983, as scheduled. Trane lodged its protest with our Office by letters dated October 4 and 5, 1983. Since we did not receive Trane's protest in our Office until more than 10 working days after the bid opening, it is untimely.

The protest is dismissed.

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