

DECISION

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

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FILE: B-213442**DATE:** March 19, 1984**MATTER OF:** SAFE Export Corporation**DIGEST:**

1. A protest filed with GAO alleging a defect in the solicitation is untimely under GAO Bid Protest Procedures where an initial protest was untimely filed with the contracting agency.
2. Initial adverse agency action on a protest filed with the agency occurs when the contracting officer accepts proposals on the proposal due date without correcting the alleged defects in the solicitation. A subsequent protest to GAO must be filed within 10 working days from the date of this initial adverse agency action to be considered.

SAFE Export Corporation protests the award of a contract for smoke detectors to Maniago & Henss under request for proposals No. DAJA76-83-R-0534 issued by the Department of the Army. SAFE generally complains that the specifications were technically incorrect, that there was no product on the market that would meet them, and that they will have to be modified after contract award.

We dismiss the protest as untimely.

On July 26, 1983, SAFE wrote to the contracting officer alleging certain deficiencies in the solicitation, most notably that a detector with a built-in alarm buzzer did not commercially exist. SAFE submitted a proposal to the Army on August 26, the closing date for receipt of proposals, and attached a letter that reiterated the firm's concerns and offered an alternate proposal. Both before and after the closing date, the contracting officer requested that technical officials review SAFE's allegations. Technical officials responded in writing after the closing date that the specifications were correct and that SAFE's alternate proposals did not meet the Army's minimum requirements as set forth in the specifications.

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The contracting officer notified SAFE of the technical officials' findings on September 29, the date the contract was awarded. On October 5, SAFE wrote to the contracting officer, alleging for the first time that the solicitation incorrectly provided that the detectors were to hook up to an inconsistent electrical current. SAFE subsequently filed its protest with this Office on October 18.

Our Bid Protest Procedures mandate that a protest based on alleged solicitation improprieties that were apparent before the closing date for receipt of initial proposals be filed before that date. 4 C.F.R. § 21.2(b)(1) (1983). If a protester first files a protest with the contracting agency, a subsequent protest to our Office will be considered on the merits only if the initial protest was timely, that is, filed before the closing date. 4 C.F.R. § 21.2(a).

SAFE filed a protest with the Army alleging an electrical inconsistency in the specifications on October 5, or nearly 1-1/2 months after the closing date for receipt of proposals. Clearly, SAFE's protest to the Army concerning that defect was not timely filed. Therefore, that portion of its subsequent protest filed here is untimely. See Norman Chapman, B-205894, January 5, 1982, 82-1 CPD 14.

Our Bid Protest Procedures also state that where a protester timely files a protest initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a). The other solicitation defects that SAFE complains of here were timely protested to the Army on July 26, that is, protested before the closing date. However, its protest filed with this Office was not filed within 10 working days of initial adverse agency action.

Initial adverse action occurs where the contracting officer permits the date and time for receipt of initial proposals to pass without correction of the alleged defect. PRC Government Information Systems, division of Planning Research Corporation, 61 Comp. Gen. 614 (1982), 82-2 CPD 261. This is what happened here. SAFE, however,

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did not protest to this Office until October 18, or 1-1/2 months after the closing date. SAFE contends that this portion of its protest is nonetheless timely because the Army did not make a decision concerning the firm's allegations until after contract award. We disagree. Once the contracting officer accepted proposals without correcting the alleged solicitation defects, regardless of whether consideration of SAFE's allegations continued, he was clearly taking an initial action adverse to SAFE's position. See PRC Government Information Systems, supra. Therefore, we also view this portion of the protest as untimely.

SAFE argues that the Army's contract with Maniago & Henss will have to be modified because the specifications were incorrect. In the event SAFE's contentions prove to be correct, it will be a matter of contract administration that the Army will have to deal with. We will only consider a protest on this issue where the contract was awarded with the intent to change it. Here the agency has denied both that the specifications require a change or that it will change them. There is also no indication in the record that the contract has been modified as SAFE suggests.

The protest is dismissed.

Harry R. Van Cleve

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Acting General Counsel