

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

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**FILE:** B-213689**DATE:** March 19, 1984**MATTER OF:** Argus Services, Inc.**DIGEST:**

Protest against an IFB specification must be filed prior to bid opening. Even if a letter to the contracting agency requesting clarification of the solicitation, allegedly sent before bid opening, could be considered a protest, it was never received by the agency, so that the post-bid opening protest to GAO is viewed as the firm's initial complaint, and thus is untimely filed. The fact that the letter to the agency, sent by regular mail, may have been lost in the mails does not serve as a basis for considering the untimely protest.

Argus Services, Inc. protests the award of a contract under invitation for bids (IFB) No. N62467-83-B-3466 for custodial services for the Mayport, Florida Naval Station. Argus alleges that a specification in the solicitation was ambiguous.

The protest is dismissed as untimely.

Section 21.2 of our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), requires that a protest based upon an alleged impropriety in an IFB that is apparent prior to bid opening be filed before that date, with either the contracting agency or the General Accounting Office.

Bid opening in this case was November 3, 1983, and we received Argus' protest letter, dated November 7, on November 10. Although Argus claims that it wrote to the contracting officer on October 27 requesting clarification of the solicitation, the Navy informs us that it never received the letter. Thus, even assuming that Argus' October 27 letter would have been viewed as a protest, since the contracting agency never received it the firm's initial protest must be considered to have been filed upon

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our Office's receipt of Argus' November 7 letter. See John H. Green and Associates, Inc., B-211686, June 8, 1983, 83-1 CPD 629. In this respect, except where a protest is sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, before the final date for filing a protest, see section 21.2(b)(3) of our Procedures, a protester makes use of the mails at his own risk, and a delay or loss in the mails does not serve as a basis for considering an untimely filed protest.

Since Argus' protest against the specification in issue was not filed before bid opening, we will not consider it on the merits. The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel

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