

DECISION



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

Curcio
29309

FILE: B-215816

DATE: September 17, 1984

MATTER OF: Custom Chemical Sales

DIGEST:

Protest not filed within 10 days after
protester learns the basis of its protest
is dismissed as untimely.

Custom Chemical Sales (Custom) protests the rejection of the proposal it submitted in response to the General Services Administration (GSA) New Item Introductory offer solicitation No. YGA-NE R9(LA)8370-N-12-1-83.

The protest is dismissed.

GSA reports that the solicitation, issued on November 1, 1983, requested offerors to supply Tilo Brite pursuant to GSA's New Item Introductory Program. Before an offeror can be awarded a contract under this program, the offeror must demonstrate that the product it is offering is a commercial item which has been sold in substantial quantities to the general public. GSA informed Custom by letter dated December 12 that its offer could not be accepted because Tilo Brite was not sold in substantial quantities to the general public.

By letter dated March 14, 1984, a congressman requested GSA to reevaluate Custom's proposal. By letter to the congressman dated March 22, GSA agreed to reevaluate Custom's proposal if Custom provided additional information demonstrating that Tilo Brite had substantial commercial sales. On April 18, Custom attempted to comply with this request and on May 3 GSA orally informed Custom that the new information showed that Tilo Brite was not sold to the commercial public in sufficient quantities to meet the requirements of the program. We received Custom's protest against the rejection of its offer on July 11, 1984.

Under our Bid Protest Procedures, a protest not based on a solicitation impropriety must be filed with this Office or the agency involved within 10 working days after the protester learns the basis of its protest. 4 C.F.R. § 21.2(a)(b)(2) (1984). The 10-working-day period begins

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when the protester receives notification from the contracting agency advising that the proposal was rejected and the reason for the rejection. GBJ, Inc., B-211214, Apr. 14, 1983, 83-1 C.P.D. ¶ 353.

GSA's letter informing Custom why its proposal could not be accepted was sent on December 12, 1983, and confirmed upon reevaluation on May 3, 1984. Since we did not receive Custom's protest until July 11, 1984, Custom's protest is untimely and will not be considered on the merits.

We are dismissing this protest without requesting Custom's comments to GSA's report since that report demonstrates that Custom's protest is not reviewable under our Bid Protest Procedures. See 4 C.F.R. § 21.3(g) (1984).

Harry R. Van Cleve
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Acting General Counsel