

**DECISION**

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

Lieberman  
PL-I  
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**FILE:** B-217033

**DATE:** November 26, 1984

**MATTER OF:** SMS Data Products Group

**DIGEST:**

Protest of specification amendment either filed with agency prior to next closing date for receipt of proposals and not filed with GAO within 10 working days of initial adverse agency action, or filed with GAO after next closing date for receipt of proposals, is untimely.

SMS Data Products Group (SMS) protests the award of a contract for single and multiuser microcomputer systems to Virginia Information Systems Corporation (VISC), under request for proposals (RFP) No. DAAG38-84-R-0013 issued by the Department of the Army. SMS asserts that the RFP specifications were overly restrictive and that its lower price offer should have been accepted.

We dismiss the protest as untimely.

The RFP was issued using brand name or equal specifications. SMS submitted an initial proposal offering an equal product on July 24, 1984. By letter of August 31, 1984, the Army notified SMS of certain aspects of its proposal which were technically unacceptable and outlined the changes needed to render the proposal compliant with the Army's minimum technical requirements. The letter also stated that a 32-bit microprocessor was now required as a result of an amendment issued on August 29, 1984, and that SMS's proposed microprocessor did not satisfy that requirement. In response, by letter of September 11, 1984, SMS submitted a modified proposal which acknowledged the amendment and made most of the technical changes outlined in the Army's letter of August 31. However, SMS took exception to the amended requirement and continued to offer a 16-bit microprocessor. The Army replied by letter dated October 3, 1984, received by SMS on the same day, which advised SMS that its offer of a 16-bit microprocessor was technically unacceptable and stated that the 32-bit microprocessor requirement was a firm and critical part of the technical specifications which could not be changed. SMS was also advised that its proposal was otherwise compliant and that best and final offers were due by October 16, 1984.

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SMS then submitted a best and final offer, again offering its 16-bit microprocessor, and again asserting that it took exception to the 32-bit microprocessor requirement. The Army advised SMS by letter of October 26, 1984, that its offer was found technically unacceptable because of its failure to provide a 32-bit microprocessor as required. Award was made to VISC for \$216,897. SMS filed a protest with our Office on November 5, 1984, alleging that the 32-bit requirement was improper and asserting that its offer for \$185,136 should have been accepted by the Army.

Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b) (1) (1984), protests of alleged solicitation improprieties that are obvious from the face of a solicitation amendment must be filed with the contracting activity or GAO prior to the next closing date for receipt of proposals. If the protest is filed initially with the contracting activity, any subsequent protest of GAO must be filed within 10 working days of the agency's initial adverse action. 4 C.F.R. § 21.2(a) (1984).

Here, SMS took exception to the allegedly restrictive specifications in its proposal modification of September 11, 1984. The Army's letter of October 3, 1984, stated that it declined to change the specification and set October 16, 1984, as the next date for receipt of proposals. SMS's protest was filed with GAO on November 5, 1984. If SMS's exception in its September 11 proposal is considered a protest to the Army, SMS's protest to GAO is untimely because it was filed more than 10 working days after the initial adverse agency action which was contained in the Army's October 3 letter. If SMS's exception is not considered a protest, then SMS's protest is untimely because it was not filed prior to the next closing date for the receipt of proposals. Applicon, a Division of Schlumberger Technology Corporation, B-213355, June 11, 1984, 84-1 C.P.D. ¶ 613.

*Harry R. Van Cleve*  
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General Counsel