



The Comptroller General  
of the United States

Washington, D.C. 20548

*Has further*

## Decision

Matter of: Proto Circuit, Inc.  
File: B-228849  
Date: August 31, 1987

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### DIGEST

A protest filed with the General Accounting Office following adverse agency action on a protest that was untimely filed with the contracting agency is untimely and will not be considered because the initial agency protest was not timely filed. The fact that the contracting agency considered the protest on the merits does not change this result.

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### DECISION

Proto Circuit, Inc., protests the award of a contract for circuit card assemblies to Florida Electronics and Transformer Co. (FETCO) under Federal Aviation Administration invitation for bids (IFB) No. DTFA-02-87-B-00577. Proto contends that the award was improper since FETCO was listed in the IFB as a component supplier. Proto contends that because it had to use FETCO's components that firm had an unfair advantage over Proto in the competition. The protester argues that the solicitation should have prohibited FETCO from bidding.

We dismiss the protest as untimely.

Bids were opened on June 18, 1987. Proto filed a protest on the same ground alleged here with the contracting agency after bid opening. The agency denied the protest by letter dated August 5. Proto then filed its protest with our Office on August 21.

A protest against an alleged solicitation impropriety apparent from the face of the solicitation--in Proto's case, the failure of the IFB to prohibit assembly component suppliers from bidding--must be filed with either the contracting agency or our Office prior to bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987). If a protest is filed initially with the contracting agency, the

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subsequent protest filed with our Office must meet two tests in order to be considered timely: (1) it must be filed within 10 working days of the protester's learning of adverse action on the agency protest and (2) the initial protest to the agency must have been timely filed. 4 C.F.R. § 21.2(a)(3). Here, while the first test is met, the second test is not since Proto's protest to the agency was untimely filed after bid opening. Thus, we will not consider Proto's protest to our Office. Ardrox, Inc., B-221241.2, Apr. 30, 1986, 86-1 CPD ¶ 421. The fact that the agency considered the untimely protest on the merits does not alter the result, since our timeliness regulations may not be waived by action or inaction of a contracting agency. Hooven Allison, B-224785, Oct. 10, 1986, 86-2 CPD ¶ 423.

We dismiss the protest.

*Ronald Berger*

Ronald Berger  
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General Counsel