



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Consolidated Industrial Skills Corporation  
File: B-231669.2  
Date: July 15, 1988

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### DIGEST

Where a firm initially protested to the contracting activity alleging a solicitation is overly restrictive prior to the closing date for receipt of proposals, the agency's opening of initial proposals without taking the requested corrective action constitutes initial adverse agency action, such that a protest to the General Accounting Office (GAO) 4 weeks later, based on agency's written denial of the agency-level protest, is untimely under GAO's Bid Protest Regulations.

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### DECISION

Consolidated Industrial Skills Corporation protests the inclusion of certain provisions in request for proposals (RFP) No. N62470-86-R-9303, issued by the Naval Facilities Engineering Command, Atlantic Division, at Norfolk, Virginia. Specifically, Consolidated protests as overly restrictive of competition the RFP's requirement for a bid bond of 20 percent of the offered price, a performance bond of 100 percent of the base year contract price, and a payment bond of varying amounts depending upon the ultimate contract price. Consolidated requests that the bonding requirements be removed from the solicitation.

We dismiss the protest as untimely.

By letter dated June 9, 1988, Consolidated filed a protest with the contracting activity, raising the same issues regarding the bonding requirements of the RFP. Despite Consolidated's protest, the agency proceeded with the procurement and received proposals on the closing date for submission of initial proposals June 10, as scheduled. The contracting agency subsequently denied Consolidated's protest in a June 15 letter. Consolidated then protested to our Office in a letter received July 7.

Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely under our Bid Protest Regulations, must be

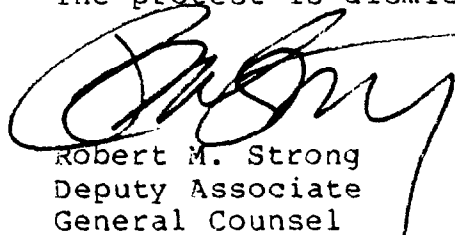
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filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1988). The quoted phrase is a term of art construed to include knowledge that the agency proceeded with the receipt of proposals in the face of the protest against a request for proposals. See Maddux & Assoc.--Request for Reconsideration, B-228285.2, Oct. 27, 1987, 87-2 CPD ¶ 403; Sunrise Assoc.--Request for Reconsideration, B-219356.2, June 27, 1985, 85-1 CPD ¶ 738 (bid opening occurring 1 day following filing of agency-level protest constitutes initial adverse agency action). It is our general view that, once the contracting activity proceeds with accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. See Computer Dynamics, Inc., B-217585, Jan. 25, 1985, 85-1 CPD ¶ 106.

Here, Consolidated filed its agency-level protest on June 9, and the Navy nevertheless proceeded with the scheduled June 10 closing date. Because Consolidated did not file its protest with our Office until July 7, more than 10 working days later, the protest is untimely.

Furthermore, even if we were to measure the timeliness period from Consolidated's receipt of the formal agency denial, it is not clear that Consolidated's protest is timely since the agency letter denying the protest was dated June 15, yet Consolidated's protest did not reach our Office until July 7.

The protest is dismissed.

  
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Deputy Associate  
General Counsel