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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Geo Marine Resources  
**File:** B-233776.3  
**Date:** January 24, 1989

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### DIGEST

Protest filed after closing date that protester effectively was precluded from competing under solicitation calling for application of a 10 percent evaluation preference for eligible small disadvantaged businesses is dismissed as untimely since the protester was on notice before the closing date that contracting agency had determined that it was not eligible for the preference.

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### DECISION

Geo Marine Resources, a small disadvantaged business concern, protests the terms of request for proposal (RFP) No. DLA13H-89-R-3401, issued by the Defense Logistics Agency (DLA) for the acquisition of various fish and shellfish items.

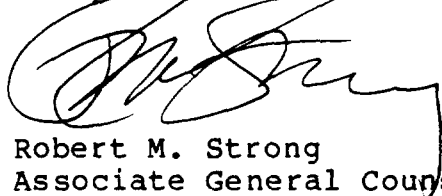
We dismiss the protest.

Amendment No. 1 to the RFP, issued on December 8, 1988, specifically states that certain items solicited under the RFP will be evaluated with a 10 percent price preference for small disadvantaged businesses. Geo Marine alleges that it effectively was precluded from submitting an offer for three items called for by the RFP (frozen breaded oysters, frozen raw breaded deveined shrimp, and breaded sea scallops) because of a November 10, 1988, decision by DLA that it does not qualify for the 10 percent evaluation preference in connection with procurements of these items. Closing was held on January 3, 1989, and Geo Marine's protest was received at our Office on January 10.

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Our Bid Protest Regulations provide that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date must be filed prior thereto. 4 C.F.R. § 21.2(a)(1) (1988). Here, the agency's intent to apply the 10 percent evaluation preference for small disadvantaged businesses could not have been more apparent; it was clearly stated in the solicitation. Further, the protester was on notice that it would not be eligible for the preference as of its receipt of DLA's November 10 decision. Thus, to the extent that the protester contends that it was precluded from submitting an offer under the RFP due to DLA's allegedly erroneous interpretation of the preference program requirements, its protest should have been filed before closing on January 3. Since it was not filed until January 10, the protest is untimely. See Hi-Tech, B-225855, Feb. 18, 1987, 87-1 CPD ¶ 184.

The protest is dismissed.



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