



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** 120 Church Street Associates

**File:** B-232139.3

**Date:** March 7, 1989

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### DIGEST

Protest alleging solicitation deficiencies which is not filed before the closing date for receipt of proposals is untimely and not for consideration on the merits.

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### DECISION

120 Church Street Associates protests alleged deficiencies in solicitation for offers (SFO) No. MNY-88-284, issued by the General Services Administration (GSA), for the acquisition of leased office space in Manhattan, New York for the Internal Revenue Service.

We dismiss the protest.

120 Church Street objects to the SFO building occupancy requirement that establishes a preference for early delivery of the building. Although this term was in the original SFO, 120 Church Street contends that a lease with GSA for the building, which was signed on December 21, renders the early delivery provision unnecessary and unduly restrictive of competition. The protester also asserts that the air conditioning requirements in the SFO, as amended on March 24, 1988, are ambiguous.

The SFO, as subsequently amended, stated that the closing date for receipt of best and final offers (BAFOs) was the close of business on February 13, 1989. GSA has submitted a current order showing that the working hours at the location designated for submission of BAFOs is 8:15 a.m. - 4:45 p.m. GSA further advises that 120 Church Street submitted its BAFO prior to the 4:45 p.m. closing time. However, our Office's time/date stamp establishes that the protest from 120 Church Street was not received by this Office until 4:48 p.m. on February 13.

Our Bid Protest Regulations provide that a protest based upon alleged improprieties in a solicitation which are

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apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1988). Because the protest was filed with this Office after the closing time for receipt of offers at GSA, the protest is untimely and not for consideration on the merits. See California Products, Inc., B-193437, Dec. 5, 1978, 78-2 CPD ¶ 391.

120 Church Street requests that if we find its protest untimely, we consider it pursuant to the exception in our timeliness rules for a protest that raises a significant issue. See 4 C.F.R. § 21.2(b). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest to the procurement community or involves a matter that has not been considered on the merits in a prior decision. Christoph's Research and Design Systems, Inc., B-232966, Dec. 12, 1988, 88-2 CPD ¶ 585. The protest of 120 Church Street does not fall within this exception.

Accordingly, the protest is dismissed.



<sup>for</sup>  
Ronald Berger  
Associate General Counsel