



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Simplex Time Recorder Co.

**File:** B-259247.2

**Date:** March 21, 1995

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### DECISION

Simplex Time Recorder Co. protests as unduly restrictive a specification provision in solicitation No. 620-1-95 issued by the Department of Veterans Affairs (VA).

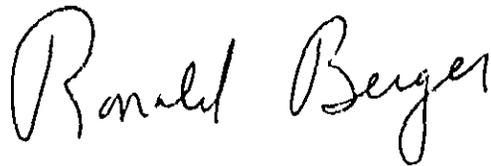
We dismiss the protest as untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests based on alleged improprieties in a solicitation must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1). If a matter is initially protested to the agency, we subsequently consider it only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Tandy Constr. Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. Here, bid opening was held on September 26, 1994; Simplex first protested to the VA by letter dated October 31, 1994. Simplex argues that its protest should nonetheless be considered timely because it did not have a reason to protest until after bid opening. We disagree.

The provision complained of requires bidders to obtain from the manufacturer of certain equipment a certification that the bidder is qualified to work on the equipment. Simplex states that prior to bid opening it had been advised that the manufacturer would provide Simplex with the certification. After bid opening, Simplex states, the manufacturer declined to do so, and Simplex then protested the provision as "proprietary."

The alleged proprietary nature of the specifications was evident from the provision itself—it did not become proprietary because of any action by the manufacturer. Simplex simply elected to rely on the willingness of the manufacturer—which it refers to as one of its competitors—to furnish a certification document. Simplex acted at its own peril in proceeding on that basis. If it believed that the VA

improperly imposed the certification requirement (Simplex calls the requirement "illogical and unfair" because a similar requirement is not imposed for the majority of the equipment involved), it should have protested that provision before bid opening instead of competing under the requirement and then complaining when it learned that it would not be able to meet it after all.

Accordingly, the protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The letters are fluid and connected, with a prominent loop at the end of the word "Berger".

Ronald Berger  
Associate General Counsel