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# Decision

**Matter of:** Rotair Aerospace Corporation

**File:** B-419570

**Date:** March 4, 2021

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James M. White, Esq., Marshall & White, PLLC, for the protester.  
Niketa L. Wharton, Esq., Defense Logistics Agency, for the agency.  
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging the terms of a solicitation, filed after the closing date established by the solicitation, is dismissed as untimely.

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## DECISION

Rotair Aerospace Corporation of Bridgeport, Connecticut, protests the terms of request for quotations (RFQ) No. SPE4A7-21-T-2716, issued by the Defense Logistics Agency for coupling assemblies. The protester contends that it should have been listed in the solicitation as an approved source of supply.

We dismiss the protest as untimely.

The RFQ was issued on October 16, 2020, and established a closing date of October 26. Req. for Dismissal, exh. 1, RFQ, at 1. The RFQ listed two approved sources of supply; Rotair was not among those listed. *Id.* at 8. On December 21, Rotair filed a protest with the agency, arguing that it should have been identified as an approved source of supply. Req. for Dismissal, exh. 3, Agency Bid Protest, Dec. 21, 2020. On January 21, 2021, the agency dismissed Rotair's protest as untimely, explaining that, "to the extent your protest challenges the sourcing of this item, your protest is untimely as you did not submit a protest prior to the closing of the solicitation."<sup>1</sup> Req. for Dismissal, exh. 4, Resp. to Agency Bid Protest, Jan. 21, 2021, at 1.

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<sup>1</sup> The agency also denied Rotair's protest to the extent the protester contended that its firm was an approved source of supply that had been improperly removed from the list

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On February 4, Rotair filed this protest with our Office. The agency filed a request for dismissal, reiterating the explanation provided to Rotair in its agency-level protest decision and arguing that the protest filed with our Office is untimely.<sup>2</sup> We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *The MIL Corp.*, B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 5. Under these rules, protests based upon alleged improprieties in a solicitation that are apparent prior to the time set for receipt of initial quotations must be filed prior to the time set for receipt of initial quotations. 4 C.F.R. § 21.2(a)(1). Further, a matter initially protested to the contracting agency will be considered timely by our Office only if the initial agency protest was filed within the time limits provided by the Regulations for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. 4 C.F.R. § 21.2(a)(3).

Here, Rotair filed its protest with the agency on December 21, 2020, well after the October 26 closing date established by the RFQ. On these facts, Rotair's subsequent protest to our Office is untimely.<sup>3</sup> See also, e.g., *W K Eng'g Int'l, Inc.*, B-414846, B-414930, Sept. 26, 2017, 2017 CPD ¶ 298 at 4 (finding protests untimely where protester failed to protest terms of the solicitations prior to the dates set for the receipt of

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of approved sources. Req. for Dismissal, exh. 4, Resp. to Agency Bid Protest, Jan. 21, 2021, at 1.

<sup>2</sup> While our Office gave Rotair an opportunity to respond to the agency's request for dismissal, the protester did not file a response. Electronic Protest Docketing System, Docket No. 11, Feb. 16, 2021.

<sup>3</sup> Moreover, even were we to consider Rotair's protest with the agency as timely--which we do not--Rotair's filing with our Office would still be untimely, as it was filed on February 4, 2021, more than 10 days after the agency's January 21 decision on the agency-level protest. Where a protest first has been filed with a contracting agency, any subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" means any action or inaction on the part of a contracting agency that is prejudicial to the position taken in a protest filed there. 4 C.F.R. § 21.0(e).

quotations), 5 n.6 (finding protest untimely where protester's agency-level protest was filed after the deadline for quotation submission).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel