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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218545

DATE: May 2, 1985

MATTER OF: Bromion Incorporated

DIGEST:

Where the initial protest to the agency that the specifications were inadequate to meet the agency's minimum needs was not filed until after bid opening, the initial protest was untimely and a subsequent protest to GAO therefore will not be considered on the merits.

Bromion Incorporated (Bromion) protests the award of a contract to Technology Research Corporation (TRC) under invitation for bids No. DAAJ10-84-B-A323, issued by the Department of the Army's (Army) United States Army Troop Support Command (TROSCOM) for watt transducers. Bromion alleges that the specifications were inadequate to satisfy the Army's minimum needs. We dismiss the protest as untimely.

Under the solicitation as amended, bid opening was scheduled for 2 p.m., February 14, 1985. By a February 13 letter to contracting officials, with a copy to the commanding general of TROSCOM, Bromion protested that the specifications, in particular Drawing 69-589 Revision "P," were inadequate to meet the Army's minimum needs. The Army claims that these letters were not received by TROSCOM until their delivery by Express Mail at TROSCOM's central mailroom at its St. Louis, Missouri, headquarters at 2:25 p.m. on February 14. The Army has submitted copies of Express Mail receipts which appear to support its claim.

By letter of March 4, the contracting officer denied Bromion's protest, on the grounds that the firm had provided no specific basis for the protest, and refused to delay award of the contract as requested by Bromion. The contracting officer, however, did invite Bromion to submit any suggestions it might have for revision of Drawing 69-589. Award was made to TRC on March 6.

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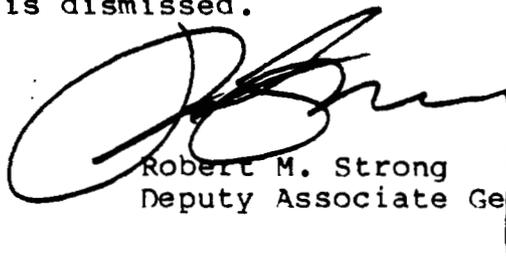
In response, Bromion submitted a "Formal Counter-Protest," dated March 11, against continuation of the procurement. As the "specific basis" for its protest, Bromion identified a number of weaknesses in Drawing 69-589 and suggested revisions in the drawing to correct them. After the contracting officer, by letter of April 1, again denied Bromion's protest, Bromion filed this protest with our Office on April 9.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), provide that where a protest has been filed initially with the contracting agency, a subsequent protest to our Office filed within 10 working days of actual or constructive knowledge of initial adverse agency action will be considered if the initial protest to the agency was timely filed. Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening in order to be timely. 4 C.F.R. § 21.2(a)(1).

Since Bromion's protest to TROSCOM that the specifications, in particular Drawing 69-589, were inadequate concerned an alleged impropriety in the solicitation which was apparent prior to bid opening, cf. Julie Research Laboratories, Inc., B-213143, Mar. 13, 1984, 84-1 C.P.D. ¶ 294 (allegation that specifications understate the agency's minimum needs concerns an impropriety apparent on the face of the solicitation), and since the protest was not filed until after the 2 p.m., February 14 bid opening, the protest was untimely.

Given the untimeliness of the initial protest to the agency, we will not consider the merits of a subsequent protest to our Office. See Radian Corporation, B-216367, Dec. 11, 1984, 84-2 C.P.D. ¶ 651.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel