

DECISION

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

FILE: B-221301 **DATE:** January 15, 1986
MATTER OF: Conner Building Maintenance, Inc.

DIGEST:

1. Protester's letter to agency requesting clarification of IFB, received by agency before bid opening, does not constitute a protest because it lacks any expression of dissatisfaction or request for affirmative action.
2. Protest against solicitation and alleged lack of time to consider agency's clarification of solicitation received by protester 1 day prior to bid opening is untimely since the protest was filed after the bid opening date.

Conner Building Maintenance, Inc. (Conner), protests any award under invitation for bids No. GS-07B-21896/78B, issued by the General Services Administration (GSA) for custodial services at a federal building in Lafayette, Louisiana.

The protest is dismissed.

By letter dated October 28, 1975, Conner requested that GSA clarify its solicitation. On November 25, Conner received a three-page letter from GSA responding to Conner's questions. Bid opening, which had been scheduled by GSA for an earlier date, was postponed until November 26 to allow GSA to respond to Conner's inquiry.

On December 9, 1985, Conner protested to this Office stating that the solicitation should be amended and that the short time between its receipt, on November 25, of GSA's response to its request for clarification and the date of bid opening, November 26, did not allow time for Conner to consider GSA's response.

A protest based on an alleged solicitation impropriety, as here, must be filed either with the procuring agency or our Office prior to bid opening in order to be timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985).

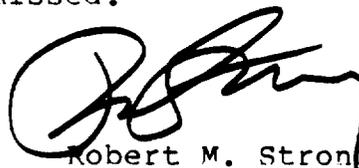
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Conner did not protest to our Office until December 9 and, therefore, its protest of the solicitation after the November 26 opening is untimely.

Although prior to opening Conner sent a letter to GSA asking for clarification of certain aspects of the solicitation, the letter merely requested answers to 13 specific questions concerning the solicitation and did not constitute a protest to the agency. While a letter does not have to explicitly state that it is intended as a protest for it to be so considered, at a minimum the intent to protest must be conveyed by an expression of dissatisfaction and a request for corrective action. IBI Security Services, Inc., B-219713, Aug. 27, 1985, 85-2 C.P.D. ¶ 235. In contrast, where, as here, a letter contains merely a request for clarification, it does not constitute a formal protest. Triple A. Shipyards, B-213433, Apr. 6, 1984, 84-1 C.P.D. ¶ 385.

Even if we were to consider Conner's October 28, 1985, letter to GSA as an agency-level protest, GSA's response to Connor on November 25, 1 day prior to bid opening, should have put Conner on notice that GSA was not going to amend the solicitation and, therefore, Conner should have filed its protest prior to bid opening date. See Alexandria Graphics and Reproduction Service, B-200249, Oct. 7, 1980, 80-2 C.P.D. ¶ 251, in which we held that a protest against an alleged solicitation impropriety is untimely where it was not filed until after the closing date even though the protester did not receive the solicitation until 1 day before bid opening.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel