

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

50700

FILE: B-183343

DATE: May 27, 1975

97277

MATTER OF: Unitec, Inc.

**DIGEST:**

While it is not clear from record whether oral complaint to contracting agency before bid opening constituted protest that specifications for smoke detectors in IFB for construction of medical facility are overly restrictive, such that only product of one supplier could meet specifications, bid opening constituted adverse agency action on complaint and since subsequent protest to GAO was received more than 5 working days after bid opening, it is untimely under Bid Protest Procedures and Standards and not for consideration.

By letter dated February 26, 1975 (received in the General Accounting Office (GAO) on March 4, 1975), Unitec Incorporated (Unitec) protested the allegedly restrictive specifications for ionization type smoke detectors in invitation for bids (IFB) DACA45-75-C-0165, issued by the United States Army Corps of Engineers, Omaha District, Omaha, Nebraska, for the construction of a Composite Medical Facility at F. E. Warren Air Force Base, Cheyenne, Wyoming. Bid opening occurred on February 14, 1975, and on February 28, 1975, a contract in the amount of \$7,189,930 was awarded to Titan Mountain States Construction Corporation.

Unitec complains that the ionization type smoke detector requirement as written would exclude its product, and, in fact, only the product of Pyrotronics, Inc., could meet the IFB specifications.

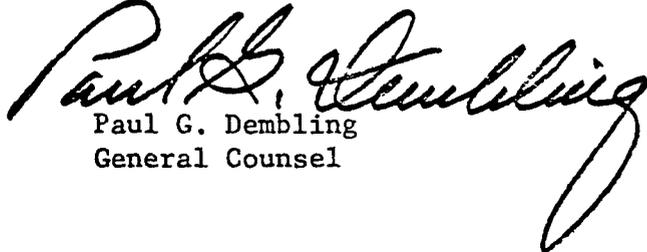
The Army reports that a representative of Unitec (the same individual who signed the protest to GAO) telephoned the Omaha District office prior to bid opening and complained about this specification. The Omaha District invited Unitec's representative to submit written data to substantiate the contention that Unitec's smoke detectors were equivalent in performance to the specified detectors and also to furnish a list of major installations where Unitec detectors had been installed and were providing satisfactory performance. The Army reports that Unitec never provided this information to the Omaha District office.

Section 20.2(a) of our Bid Protest Procedures and Standards (4 C.F.R. § 20.2(a) (1974)) states in pertinent part:

"(a) Protestors are urged to seek resolution of their complaints initially with the contracting agency. Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of proposals shall be filed prior to bid opening or the closing date for receipt of proposals \* \* \* If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely. \* \* \*"

Since Unitec's protest was against an alleged impropriety apparent prior to bid opening, it had to be filed prior to bid opening in order to be considered timely. While it is not clear from the record as to whether Unitec's oral complaint to the Omaha District office constituted a protest of the specifications, the Army's proceeding to bid opening on February 14, 1975, constituted an adverse agency action on this complaint if it is considered a protest. Consequently, since Unitec's protest was received in our Office on March 4, 1975, which was more than 5 working days after bid opening, it must be considered untimely. See B-178990, October 26, 1973, affirmed at Kleen-Rite Janitorial Service, Inc., B-178990, February 19, 1974; Southern Packaging and Storage Co., Inc., B-181249, June 7, 1974, affirmed July 15, 1974.

Therefore, the protest will not be considered on the merits.

  
Paul G. Dembling  
General Counsel