

DECISION

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

51024

FILE: B-184411

DATE: August 29, 1975

MATTER OF: Art Metal - U.S.A., Inc.

97442

DIGEST:

Where protester was advised it had been found nonresponsible and protested to GAO 12 working days later, protest is untimely because not filed within 10 working days after basis for protest was known. Objection to noncompetitive effect of award to competitor relates to alleged impropriety in specifications, which should have been protested before bid opening date, or, in any event, within 10 days after notification of award to competitor.

Art Metal - U.S.A., Inc. (Art Metal), protested to our Office by letter dated July 1, 1975, against the award of a contract to The Mosler Safe Company (Mosler) for several items (Nos. 7, 8 and 9) under invitation for bids (IFB) No. FPPF0-S1-29724-A, issued by the General Services Administration (GSA). The IFB solicited bids on several types of security filing cabinets. Art Metal contended that GSA erroneously determined that it was not a responsible bidder as to the protested items. The protester also contended that the award to Mosler had the effect of making the awarded items proprietary in nature, since Mosler, the only manufacturer of the hand change locks used in the cabinets, will now be in the position of a sole-source vendor for these cabinets.

We note that Art Metal received an award under the IFB for certain other items. GSA has furnished our Office with a copy of its letter to Art Metal, dated June 12, 1975, which advised the protester of its award and of the fact that items 7, 8 and 9 were not awarded to Art Metal because it had been determined to be nonresponsible as to these items. Also, a copy of the certified mail receipt indicates that Art Metal received this letter on June 18, 1975. In a letter to our Office dated August 19, 1975, Art Metal confirms the accuracy of this information.

Art Metal's protest letter was received (filed) at our Office on July 7, 1975. In this regard, section 20.2 of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) provides that, except for cases of alleged solicitation improprieties, protests to our Office shall be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. Art Metal's

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protest against the determination of nonresponsibility should therefore have been filed not later than July 2, 1975.

As for the alleged noncompetitive effect of the award to Mosler, we note that Art Metal's protest contends that the past history of security filing cabinet procurements has been largely noncompetitive. It appears that Art Metal's basic objection is to the fact that the IFB specifications stipulated the hand change lock, which the protester contends is manufactured only by Mosler and is obsolete. In this regard, section 20.2 of our procedures provides that protests based upon alleged improprieties in solicitations which are apparent prior to bid opening shall be filed prior to bid opening. Therefore, a protest on this basis after bid opening is untimely. In any event, the protest against the award to Mosler is untimely also for the reasons discussed above.

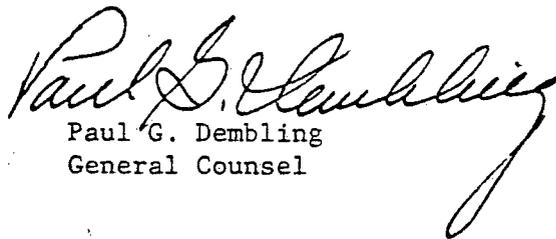
Art Metal's August 19, 1975, letter points out that section 20.3(e) of our Bid Protest Procedures provides that the failure of a protester or interested party to comply with the time limits stated in that section may result in resolution of the protest without consideration of the comments untimely filed. However, we note that this section relates to time limits for comment on the agency's report, and not to the time limits applicable to the filing of the protest (see section 20.2).

Art Metal next contends that an inadvertent delay in filing should not preclude consideration of the merits, since consideration might result in a considerable savings to the Government, and also that the delay in filing did not prejudice other parties. These arguments provide no basis to consider the protest on the merits. See, in this regard, Cessna Aircraft Company et al., 54 Comp. Gen. 97, 111 (1974).

Art Metal also points out that it did not become aware of the provisions of our Bid Protest Procedures until after it filed its protest. In this regard, we believe that since our procedures have been published in the Federal Register (40 Fed. Reg. 17979, April 24, 1975), protesters must be charged with constructive notice of their provisions. See, in this regard, DeWitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974).

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Accordingly, Art Metal's protest is untimely and not for consideration.


Paul G. Dembling
General Counsel