

DECISION

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

61323

FILE: B-186495

DATE: August 10, 1976

98702

MATTER OF: Service Distributors, Inc. (Reconsideration)

DIGEST:

Prior decision dismissing protest as untimely is affirmed since protest was not filed with GAO within 10 days of initial adverse agency action. Timeliness requirements of GAO Bid Protest Procedures do not exist to enable GAO to "avoid issue" but rather to provide for expeditious consideration of objections to procurement actions without unduly delaying procurement.

Service Distributors, Inc. has requested reconsideration of our decision in Service Distributors, Inc., B-186495, June 29, 1976, 76-1 CPD 422, dismissing as untimely its protest against the setting aside of invitation for bids No. DAKF03-76-B-0034, issued by the United States Army at Fort Ord, California, for small business participation only.

The protest was initially timely filed directly with the Army and the Small Business Administration (SBA). In letters received by Service Distributors, Inc. on May 12, 1976, and May 17, 1976, the protester was notified by the SBA and the Army, respectively, that its protests had been denied. Meanwhile bid opening occurred on May 14, 1976. Service Distributors filed its protest with this Office on June 9, 1976.

Sections 20.2(a) and (b) of our Bid Protest Procedures, 4 C.F.R. 20.2(a)(b) (1976), state in pertinent part:

"(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *.

"(b) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. * * *"

Our prior decision concluded that since the protest was not filed in this Office until June 9, 1976, which was after bid opening and more than 10 days after the protester's receipt of notice of initial adverse agency action, it was untimely and not for consideration on the merits.

Service Distributors, Inc. now argues that its "* * * protest filed 27 April 1976 met all timeliness requirements and therefore any subsequent material submitted should be considered." Moreover, the protester states that: "[t]he matter of timeliness would appear to serve no other purpose than to avoid the issue."

Our Bid Protest Procedures establish two basic tests for determining the timeliness of a protest filed with this Office if a protest was first filed with the contracting agency. First, the protest filed initially with the agency must be filed there in accordance with the time limits prescribed by our Procedures in 4 C.F.R. § 20.2(b)(1) and (2). Second, the subsequent protest to this Office must be filed within 10 days of the protester's learning of initial adverse agency action. 4 C.F.R. § 20.2(a). Here, the protest filed with the agency was timely. However, Service Distributors received notice of adverse action on its protest when it received the SBA's letter on May 12, 1976 and the Army's letter on May 17, 1976. Furthermore, we also regard the May 14, 1976 bid opening as adverse agency action. Leasco Information Products, Inc., et al., 53 Comp. Gen. 932, 946 (1974), 74-1 CPD 314. By not filing its protest with this Office until June 9, 1976, Service Distributors clearly did not comply with the second test for timely filing.

Our timeliness rules were not promulgated to provide opportunities for this Office to "avoid the issue." To raise a legal objection to the award of a Government contract is a serious matter. At stake are not only the rights and interests of the protester, but those of the contracting agency and other interested parties. Effective and equitable procedural standards

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are necessary so that parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process. See Cessna Aircraft Company; Beech Aircraft Corporation, 54 Comp. Gen. 97. (1974), 74-2 CPD 91.

The decision of June 29, 1976, is affirmed.

Deputy

By K. M.
Comptroller General
of the United States