

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

FILE: B-186720

DATE: August 9, 1976

MATTER OF: E. P. Reid, Inc.

DIGEST:

Where bidder protests to agency cancellation of solicitation and again protests to agency one day after bid opening agency's failure, upon resolicitation, to materially change or clarify original solicitation, protest to GAO several weeks later is dismissed as untimely since not filed within 10 days of adverse agency action or before bid opening of resolicited procurement.

In a letter received in this Office on June 15, 1976, E. P. Reid, Inc. (Reid), Lyndhurst, New Jersey, has protested the rejection of all bids by the General Services Administration (GSA) under Project No. RNY 75133, issued January 22, 1976, for the installation of smoke detectors at the United States Customs Court in New York City. As explained below, we must reject Reid's protest as untimely filed.

Bids on this project were opened on February 11, 1976, and Reid was the low bidder. By letter of February 23, 1976, bidders were notified that all bids had been rejected due to the need to revise the specifications and that bidders would be provided an opportunity to rebid. Reid protested the cancellation to GSA in a letter dated March 9, 1976, because it had been informed that the problem with the specifications related to the compatibility of the smoke detectors with other equipment and that the scope of the Government's requirements had not changed. The protester contended that in fairness the solicitation should not have been cancelled after exposure of its low bid because the firm had offered compatible equipment "that would provide exactly what the engineering and fire protection people desired." The protester argued that GSA should have inquired as to the compatibility of the firm's equipment prior to rejection of its bid.

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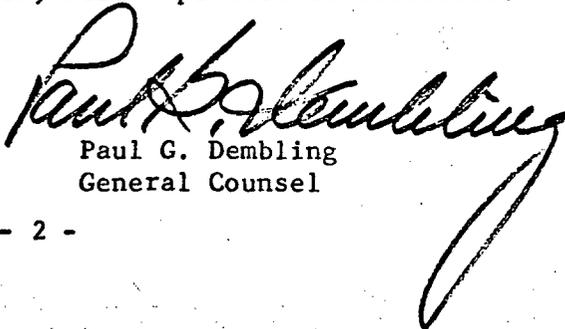
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In a letter dated March 18, GSA answered Reid's protest stating its belief that the specified design for smoke detectors was not compatible with the existing fire alarm system in the building and that in fairness to other bidders GSA could not have consulted with Reid regarding the compatibility of that bidder's equipment. GSA contended that its action was consistent with the essential requirement of competitive bidding that all bidders compete on the same terms. GSA further advised that its letter was intended to clarify the basis for rejecting Reid's protest.

Under our Bid Protest Procedures, Reid was required to pursue this matter here within 10 working days after receipt of GSA's initial adverse action on its protest, that is, from receipt of GSA's March 18 letter. 4 C.F.R. 20.2(a) (1976). Although Reid believes that GSA's March 18 letter is not a formal denial of its protest and that it was justified in pursuing the matter in a subsequent letter to GSA, we think the GSA letter is a clear rejection of Reid's initial protest. Reid failed to pursue its protest with this Office in a timely fashion because none was received here until June 15, 1976. Although Reid may have considered GSA's initial adverse action to be ill-founded or inadequately explained, leading the firm to engage in further discussion with the agency, it is for this reason that we require protesters to file with this Office upon notification of the agency's initial adverse action on the protest. 52 Comp. Gen. 20, 22 (1972).

It also appears that Reid has questioned whether the specifications, as revised, have been materially changed or clarified. In this regard, our procedures require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening with either the procuring agency or this Office. 4 C.F.R. 20.2(b)(1) (1976). Although this objection should have been apparent to Reid prior to bid opening of the revised solicitation, a timely protest was not received here. Also, GSA reports that while it received a letter dated April 30, 1976, the day following the bid opening, which questions the revised solicitation, none was received prior to the bid opening. Accordingly, Reid's objections to the revised solicitation are also untimely filed.

For the reasons stated, Reid's protest is dismissed.


Paul G. Dembling
General Counsel