

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**609 ~~72~~ 88

FILE: B-186514

DATE: June 14, 1976

MATTER OF: El Toro Materials Co.

98835

**DIGEST:**

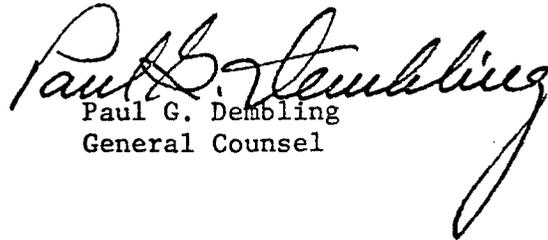
Where protest filed with agency on April 26, 1976, alleging improprieties in solicitation for sale of earth fill material, asks for cancellation of proposed sale, and sale nevertheless was held by agency on April 27, 1976, initial adverse agency action dates from April 27, 1976. Therefore, protest filed at GAO on May 13, 1976, more than 10 days after initial adverse agency action, is untimely and cannot be considered on merits.

By telegram dated and filed May 13, 1976, El Toro Materials Co. (El Toro) has protested alleged improprieties in solicitation GS-09-D(R) 76-8, issued by the General Services Administration (GSA) for the sale of earth fill material from El Toro Marine Base, Orange County, California. After unsuccessfully attempting to clarify alleged discrepancies, ambiguities, omissions and contradictions in the solicitation, El Toro protested to GSA on April 26, 1976, asking that the proposed sale be canceled. Though aware of the protest and request by El Toro for cancellation the contracting officer, nevertheless, proceeded with bid opening on April 27, 1976. A contract was awarded to the high bidder on May 5, 1976.

Where a protest has initially been filed with the contracting agency, section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that any subsequent protest to our Office must be filed "\* \* \* within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action \* \* \*." Here, initial adverse agency action occurred on April 27, 1976, when the contracting officer proceeded with the sale despite knowledge of El Toro's protest

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and request for cancellation. Since El Toro did not file its protest with our Office within 10 working days of initial adverse agency action on April 27, 1976, the protest is untimely and cannot be considered on the merits.

  
Paul G. Dembling  
General Counsel