

DECISION



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

60845

69897/98977

FILE: B-186367

DATE: May 4, 1976

MATTER OF: Western Machinery Company

DIGEST:

Where protest was initially filed with contracting agency, and subsequent protest to GAO was filed more than 10 working days from protester's formal notification of agency's denial of protest, matter is untimely filed with GAO and therefore not for consideration.

The subject protest has been filed against the rejection by the Department of the Interior of Western's bid as nonresponsive under solicitation No. 6-07-40-00610, issued by that agency's Bureau of Reclamation, Yuma, Arizona.

By letter of February 26, 1976, which Western received on March 1, 1976, Western was advised of the rejection of its low bid, the reasons therefor, and of the award to the next low responsive bidder.

By letter of March 2, 1976, Western filed a formal protest with the agency, to which the agency replied by letter of March 18, 1976, affirming the validity of its rejection of Western's bid, and providing more detailed information in support of the rejection. This letter was received by the protester on March 22, 1976, on which date the protester wrote the agency to express its dissatisfaction with the agency's disposition of the protest.

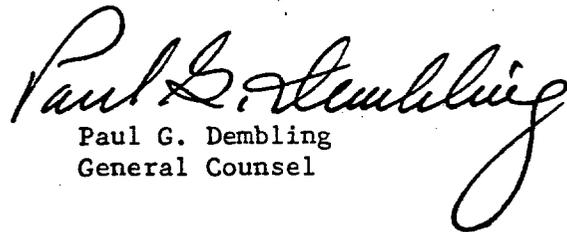
By letter of April 20, 1976, received here on April 22, 1976, the protester filed an apparent protest, enclosing its correspondence with the agency and requesting our conclusions on the matters set forth therein.

Our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provide in section 20.2(a) that if a protest has been filed initially with the contracting agency, any subsequent protest to this Office must be "filed" within 10 /working/ days of formal notification of, or actual or constructive knowledge of, initial adverse agency action. The term "filed" as used in this section means receipt in the contracting agency or in this Office, as the case may be. 40 Fed. Reg. 17979 20.2(b)(3), supra.

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In view thereof, the agency letter of March 18, 1976, received by the protester on March 22, 1976, must be considered as formal notification of initial adverse agency action since its effect was to deny the protest. Accordingly, under the cited provisions, the protester was required to file a protest with this Office within 10 working days of March 22 in order for the protest to be considered as "timely" filed.

In view of our receipt on April 22 of Western's protest, the protest is clearly untimely and therefore not for consideration on the merits.


Paul G. Dembling
General Counsel