

**DECISION**



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

60450  
~~99279~~  
~~99388~~  
99173

FILE: B-185573

DATE: January 29, 1976

MATTER OF: Energy Piping Systems, Inc.

**DIGEST:**

Protest timely filed with and denied by procuring activity, which was forwarded to GAO upon request of protester, is not for consideration since protester has never protested here and section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), requires that protests be filed within 10 working days of constructive or actual knowledge of initial adverse agency action. Furthermore, request to agency that protest be forwarded to GAO does not constitute filing in GAO even if timely.

By letter dated December 15, 1975, from the Department of the Army, Office of the Judge Advocate General, a copy of the administrative record concerning the protest to the Army of Energy Piping Systems, Inc. (EPS), under invitation for bids (IFB) No. DABT43-76-B0002, was forwarded to our Office. A copy of this record was also sent to counsel for EPS. By letter dated December 24, 1975, counsel has submitted comments to our Office responsive to the administrative record. The protester has never filed a protest with our Office concerning this matter.

Bid opening was held on October 1, 1975. EPS was determined to be nonresponsive for failure to acknowledge an amendment to the IFB and on October 6, 1975, award was made to Steve Black, Inc. On October 16, 1975, the contracting officer received a timely protest from EPS. The contracting officer denied the protest and orally communicated his decision to counsel.

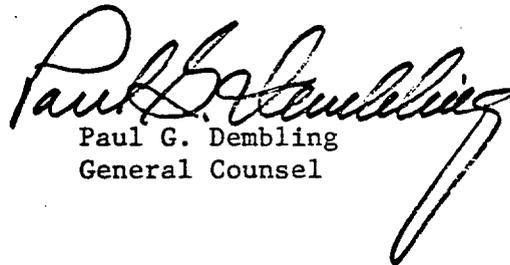
While it is unclear from the record when EPS received notification that its protest had been denied, it is apparent that it knew by October 29, 1975. By letter of the same date from the contracting officer to the Commander of the United States Army Training and Doctrine Command it is stated that:

"Attempts to resolve the issue locally were not successful, and the protesting firm indicated that they would carry the protest to a higher authority. \* \* \*"

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The clear indication is that by October 29, 1975, the protest had been denied and EPS had expressed its desire to appeal the denial to a higher level. By letter dated November 14, 1975, to the agency in response to its inquiry, counsel requested that EPS's appeal be forwarded to our Office.

Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in part that "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 \* \* \*." Since EPS received notification of the agency's initial denial of its protest not later than October 29, 1975, any protest to our Office was required to be filed in our Office by November 12, 1975. As no protest was filed here by that date, we will not consider the matter. Furthermore, although EPS indicated by letter dated November 14, 1975, to the agency that it wanted its protest considered by our Office, such request to the agency would not constitute the filing of a protest here even if timely.

  
Paul G. Dembling  
General Counsel