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J. Cohen  
Procs II

**DECISION**



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

FILE: B-197476 .

DATE: November 12, 1976 .

**MATTER OF:**

Southeastern Carbonics, Inc.

**DIGEST:**

1. Basis for protest against protester's failure to receive IFB was known at latest by bid opening date as published in Commerce Business Daily. Where initial protest to contracting agency was filed more than 10 working days thereafter, subsequent protest to GAO will not be considered on its merits.
2. Protest against award of contract filed more than 10 working days after notification of adverse agency action on initial protest to agency is untimely and will not be considered on its merits.

By letter of October 7, 1976, Southeastern Carbonics, Inc. (Southeastern), protests its failure to receive a copy of an invitation for bids issued by the General Services Administration (GSA) to supply dry ice for Warner Robins Air Force Base, Georgia, where Southeastern was the incumbent contractor for that service. Southeastern also protests the award of a contract under that solicitation on the bases that competition for the procurement was inadequate and reasonable prices were not obtained.

The solicitation was advertised in the Commerce Business Daily on May 26, and bids were opened on June 30. Southeastern has furnished us a copy of a mailgram dated August 4 which Southeastern sent to our Office, but which we never received, protesting GSA's failure to solicit Southeastern's bid. By mailgram August 4, Southeastern also protested the matter to GSA and was advised by that agency in a letter dated August 12 that

"We find that the bid price received for the item in question is reasonable and there is no evidence in our file indicating a conscious or deliberate intention to exclude your company from bidding. We will, therefore, proceed with the award."

By letter to GSA of August 17, Southeastern took exception to that response to its protest, and further alleged that competition

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for the procurement had been inadequate and reasonable prices had not been obtained. In a letter dated August 27, GSA in effect sustained its determination of August 12 and denied the new allegations.

Section 20.2 of our Bid Protest Procedures (Procedures), 4 C.F.R. § 20 (1976), provides in part:

"(a) \* \* \* 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 \* \* \*

\* \* \* \* \*

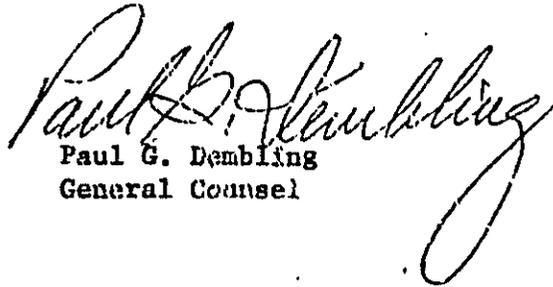
"(b)(2) \* \* \* bid protests shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." (Emphasis added.)

Southeastern knew the basis for its initial protest to GSA on June 30 at the latest, which was the date set for bid opening and so advertised in the Commerce Business Daily on May 26, such publication constituting constructive notice of the information contained therein. Non-Linear Systems, Inc., B-182636, February 12, 1975, 75-1 CPD 91. Since its protest was not filed with GSA until more than 1 month later, sections 20.2(a) and (b) of our Procedures preclude consideration of the merits of that part of its protest. In this connection, we note that even if Southeastern's August 4 mailgram to GAO had been received in our Office, the protest would have been untimely under section 20.2(b)(2) of our Procedures.

Concerning whether adequate competition or reasonable prices were obtained under the procurement, GSA denied Southeastern's protest on those issues in its letter of August 27. We have been advised that the letter was received by the protester shortly after August 27. Southeastern's October 7 protest to GAO was received

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in our Office on October 12, or more than 10 working days after Southeastern was notified of the initial adverse agency action. Accordingly, it was not filed within the time limit set forth in section 20.2(a) of our Procedures, and also will not be considered on its merits.

  
Paul G. Dembling  
General Counsel