

DOCUMENT RESUME

03261 - [A2173301]

Untimely Protest against Bid Rejection. B-189110. August 4, 1977. 2 pp.

Decision re: Corley Mechanical Contractor; by Paul G. Dambling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).
Organization Concerned: Department of the Army: Corps of
Engineers, Omaha, NE.
Authority: 4 C.F.R. 20.2(b)(2). 53 Comp. Gen. 533-4. B-185910
(1976).

The protester objected to the rejection of its low bid as "unconscionably low" and questioned the rejection of all bids. The protest was filed with GAO more than 10 days after the agency called to advise the protester of the bases for rejection and of the decision to reject all bids; the protest was untimely and was not considered on its merits. (Author/SC)

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Ms. Pettit
P. d. #1

DECISION

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

FILE: B-189110

DATE: August 4, 1977

MATTER OF: Corley Mechanical Contractor

DIGEST:

Protest concerning rejection of bid as "unconscionably low" filed with GAO more than 10 days after agency telephonically advised protester of bases for rejection and of decision to reject all bids is untimely and not for consideration on merits.

Corley Mechanical Contractor (Corley) protests the rejection of its bid for Fuel Conversion Project 170.10 at Fort Leonard Wood, Missouri, in response to invitation for bids (IFB) No. DACA45-77-B-0024, issued by the Department of the Army (Army), Corps of Engineers, Omaha District.

The IFB was issued on February 3, 1977, and bids were opened on March 31, 1977. Six bids were received, and Corley was the apparent low bidder at \$488,000; the remaining bids ranged from \$799,000 to \$1,326,392. The Army's estimate for the project was \$641,234.

Between April 1 and April 21, 1977, the Army obtained verification and a breakdown of Corley's bid. On the basis of the information submitted, notwithstanding the protester's verification, the Army decided on April 28, 1977, to reject Corley's bid as "unconscionably low." The procuring activity further determined to reject all bids due to lack of currently available funds to award a contract in the amount of the next low bid.

The record shows that Corley was telephonically informed on April 29, 1977, of the agency's decision not to make an award and of the bases for that decision. A letter to the same effect was sent to Corley on that date. Counsel's letter of protest, dated May 13, 1977, was sent to our Office by registered mail on May 16, 1977, and was received on May 17, 1977. In essence, the protester contends that there is no legitimate reason for the rejection of its bid, that the contracting officer's action in rejecting the bid is arbitrary and capricious, and that the Army's letter of April 29, 1977, fails to disclose why rejection of all bids is in the public interest.

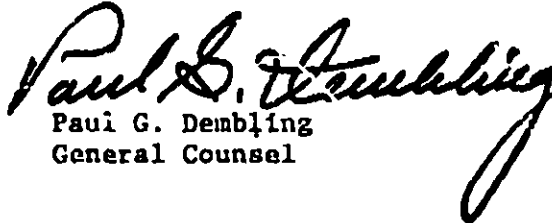
B-189110

Our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), however, require that:

"* * * bid protests shall be filed not later 10 days after the basis for protest is known or should have been known, whichever is earlier."

Because our Bid Protest Procedures have been published in the Federal Register, protesters such as Corley are charged with constructive notice of their provisions. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533, 534 (1974), 74-1 CPD 47.

We believe that Corley was sufficiently apprised of the reasons for rejection of its bid so that it knew, or should have known, its bases for protest as a result of its conversation with Army personnel on April 29, 1977. The Army's letter of that date did not extend Corley's period for filing a timely protest with our Office. Micronics International, Inc., B-185910, May 11, 1976, 76-1 CPD 308. Because Corley's protest was filed with our Office more than 10 working days after the bases for the protest were known, the protest is untimely and not for consideration on the merits.


Paul G. Dembling
General Counsel