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DECISION



James Vickers
THE COMPTROLLER GENERAL PL 1
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-191240

DATE: March 3, 1978

MATTER OF: Electro-Magnetic Refinishers, Inc.

DIGEST:

Where bidder protests alleged improprieties in solicitation to agency prior to bid opening, opening of bids without taking any corrective action constitutes initial adverse agency action within meaning of GAO Bid Protest Procedures. Subsequent protest to GAO filed more than 10 working days after bid opening is therefore untimely and will not be considered on merits.

Electro-Magnetic Refinishers, Inc. (E-M), has protested any award under invitation for bids No. GSW-6FWR-80027 issued by the General Services Administration (GSA).

All of the bases of E-M's protest concern the specifications contained in the IFB or the failure of GSA to convey certain information to the bidders. All of the problems which E-M had with the IFB were evident from a review of the IFB prior to bid opening.

The IFB was issued on December 7, 1977, and a prebid meeting was held with prospective bidders on January 23, 1978, and bids were opened on January 24, 1978.

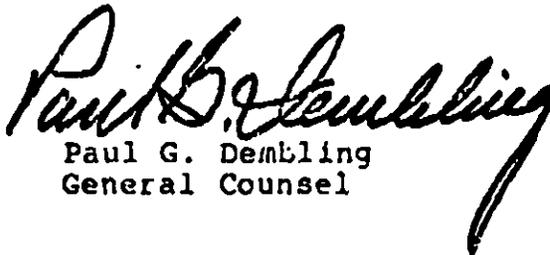
During the prebid meeting on January 23, 1978, E-M advised the contracting officer orally that it was protesting the terms of the solicitation. On January 24, 1978, E-M included a letter of protest with

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its bid package. The contracting officer, upon being advised of the letter, placed it aside and proceeded with the opening of bids. By letter of January 31, 1978, the contracting officer formally denied the protest of E-M.

Our Bid Protest Procedures provide that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening shall be filed "prior" to bid opening. 4 C.F.R. § 20.2(b)(1). If a protest has been filed initially with the contracting agency, any subsequent protest to this Office filed within 10 working days of actual or constructive knowledge of "initial adverse agency action" will be considered, provided the initial protest to the agency was timely. 4 C.F.R. § 20.2(a). "Adverse agency action" is defined to include any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. 4 C.F.R. § 20.0(b).

In the instant case, the initial adverse agency action was the opening of bids without taking any corrective action with respect to the complained of terms of the solicitation. Square Deal Trucking Company, Inc., B-182436, February 19, 1975, 75-1 CPD 103. Since E-M's protest to our Office was received on February 8, 1978, 11 working days after bid opening, it was untimely filed here under § 20.2(a) of our Bid Protest Procedures (4 C.F.R. Part 20 (1977)). See Ward & Paul, Inc., B-184563, October 31, 1975, 75-2 CPD 268.


Paul G. Dembling
General Counsel