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**DECISION**



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

R. Heitzman  
Transp.

**FILE: B-191779**

**DATE: June 21, 1978**

**MATTER OF: Safety-Arms & Police Equipment, Ltd.**

**DIGEST:**

1. Protest filed more than 10 days after actual knowledge of initial adverse agency action is untimely and not for consideration.
2. Contracting activity is not in violation of our Bid Protest Procedures regarding withholding of award pending disposition of protest where protest is made after award.

Safety-Arms & Police Equipment, Ltd. (Safety-Arms), has protested the making of an award under invitation for bids (IFB) No. IFB-AMC-78-14 issued on January 11, 1978, by the Atlantic Marine Center (AMC), a division of the Department of Commerce, National Oceanic and Atmospheric Administration. The protest was received here April 24, 1978. The IFB was issued to satisfy a requirement for guard service at AMC on an annual basis. The bid opening date was set for February 10, 1978, and award was made on March 20, 1978.

AMC states that the Safety-Arms protest is untimely and not for consideration on the merits, and we agree.

Safety-Arms was orally advised on March 21, 1978, that the award had been made and was also given the name of the contractor receiving the award. By letter of March 22, 1978, AMC advised Safety-Arms that its bid was not responsive because of its failure to sign Amendment One to the IFB, and to sign a certification regarding statutory restrictions on the use of detective agencies. Safety-Arms, in response to the oral notification of March 21, responded with a letter of March 22, 1978, stating its concern about not receiving the award. It is obvious that the letter from AMC to Safety-Arms, and the letter to AMC from Safety-Arms must have crossed in the mail. In response to this exchange of correspondence, the Contracting Officer for AMC met with Safety-Arms on March 28, 1978, and reiterated the reasons for the denial of its bid.

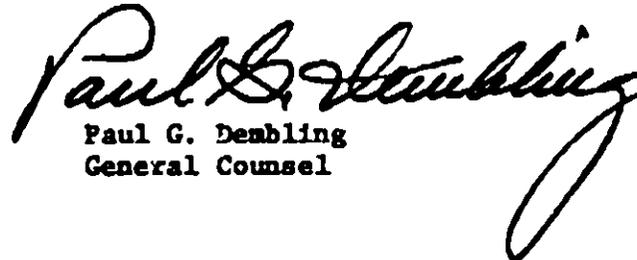
Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. 20.2(a) (1977) provides in part that "If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered \* \* \*." (Emphasis supplied.) Since Safety-Arms received oral notification of the agency's initial denial of its protest at the meeting of March 28, 1978, its protest filed with our Office on April 24, 1978, is untimely. The Public Research Institute of the Center for Naval Analyses of the University of Rochester, B-187639, August 15, 1977, 77-2 CPD 116; Micronics International, Inc., B-185910, May 11, 1976, 76-1 CPD 308.

Safety-Arms engaged in further correspondence with the contracting activity which resulted in a second denial of its protest by letter dated April 12, 1978. However, the initial and controlling adverse agency action (the original protest denial) occurred March 28, 1978. Technica, B-190984, March 9, 1978, 78-1 CPD 188.

Safety-Arms states in its letter of May 11, 1978, in response to the Contracting Officer's report, that the agency failed to follow our Bid Protest Procedures, 4 C.F.R. 20.4 (1977), by withholding an award pending resolution of its protest.

As previously stated, it was not until March 28, 1978, that the contracting activity was aware of the Safety-Arms protest. And that date was not prior to award, but subsequent to the date of award of March 20, 1978. Thus, once an award has been made there is no requirement in the regulations that contract performance be suspended until the protest has been resolved; rather, the question of whether to suspend contract performance until resolution of a pending protest is essentially a discretionary matter for the contracting agency. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289.

Accordingly the protest is dismissed as untimely.

  
Paul G. Deabling  
General Counsel