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V. Seigler Stein

DECISION



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

Ac6

FILE: B-193066(3) DATE: December 26, 1978
MATTER OF: M & M Services, Inc.

DIGEST:

[Bid Opening Constitutes Adverse Agency Action Under GAO Bid Protest Procedures]

1. Protest to GAO not filed within 10 working days of receipt of actual or constructive knowledge of initial adverse agency action on protest filed with agency is untimely and not for consideration on the merits. Bid opening constitutes adverse agency action under GAO Bid Protest Procedures.
2. Protest alleging specification deficiencies filed after bid opening is untimely and not for consideration.

M & M Services, Inc. (M & M) protests solicitation No. DAKF19-78-B-0079, issued by the United States Army (Army), Ft. Riley, Kansas for mess attendant services. M & M alleges that certain provisions of the specifications are misleading and ambiguous, thus making it difficult to determine the precise scope of the contract and insure accurate bids.

M & M initially raised the issue with the Army by letter of September 19, 1978, and requested the solicitation be amended. M & M does not indicate that it received a response from the Army. It does indicate, however, that bid opening occurred on October 6, 1978. M & M protested to this Office on November 2, 1978.

Our Bid Protest Procedures state in pertinent part:

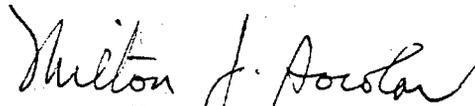
"* * * If a contract has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered * * *."
4 C.F.R. 20.2(c) (1978).

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If we view the September 19, 1978 letter to the agency as a protest, then bid opening on October 6, 1978 constituted initial adverse agency action as that term is used in our Procedures. See The Art Production Company, B-191470, April 5, 1978, 78-1 CPD 273. Since the protest to this Office was not filed until November 2, 1978, more than 10 working days after bid opening, the protest is untimely.

On the other hand, if the September 19 letter is not a protest and we consider the November 2, 1978 filing with this Office as M & M's first formal protest, then the protest similarly would be untimely because M & M's allegations relate to deficiencies in the solicitation. Section 20.2(b)(1) of our Procedures provides that a protest based upon an alleged impropriety in a solicitation, which is apparent prior to bid opening, must be filed "prior to bid opening." Since bid opening occurred on October 6, 1978, a November 2 protest would be untimely and not for consideration on the merits. See Complete Building Maintenance Co., Inc., B-190996, January 19, 1978, 78-1 CPD 52; Universal Building and Maintenance, Inc., B-190996, January 31, 1978, 78-1 CPD 85.

The protest is dismissed.


Milton J. Socolar
General Counsel