

Proc I

DECISION



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

9377

FILE: B-193527

DATE: March 9, 1979

MATTER OF: General Leasing Corporation - [Reconsideration of
a DECISION DISMISSED as untimely]

DIGEST:

Prior decision dismissed as untimely protest to GAO against issuance of solicitation, which was filed after closing date for initial proposals. On reconsideration, protester alleges that letter sent to agency before closing date was protest to agency. Even if letter to agency is considered protest, agency's consideration of proposals despite concerns expressed in letter was initial adverse agency action and protest filed with GAO over 3 months after that date is untimely. Therefore, prior decision is affirmed.

General Leasing Corporation (General Leasing) has requested reconsideration of our decision General Leasing Corporation, B-193527, January 5, 1979, 79-1 CPD 6, which dismissed its protest as untimely.

General Leasing had protested the issuance of request for proposals (RFP) No. GSA-CDPR-C-0010 for automated data processing equipment (ADPE) by the General Services Administration (GSA). General Leasing contended that the equipment requested fell within the scope of its current contract and should have been purchased under it.

The RFP was issued on June 20, 1978, and a copy was mailed to General Leasing. The closing date for initial proposals was August 15, 1978. We stated that since the protest was essentially against a patent solicitation defect, to be timely it must have been filed either with GSA or our Office prior to the closing date for initial proposals as required by section 20.2(b)(1) of our Bid Protest Procedures. 4 C.F.R. § 20.2(b)(1) (1978).

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Since General Leasing did not appear to have protested to either the agency or our Office by that date, we dismissed its protest as untimely.

General Leasing now contends that a letter of June 14, 1978, that it sent to GSA, was a timely protest to GSA. General Leasing argues that neither our Bid Protest Procedures nor GSA requires protests to follow any particular form; that "it is enough that the protester put the agency on notice that there is an objection to its action." According to the protester, GSA's initial adverse action was a letter received by General Leasing on November 30, 1978, flatly refusing to accept General Leasing's offer to supply the equipment under its current contract. Therefore, General Leasing argues, its protest to us, received December 4, 1978, satisfied the requirement of section 20.2(a) of our Bid Protest Procedures, that if a protest is filed initially with an agency, any subsequent protest to us must be filed within 10 days of actual or constructive knowledge of initial adverse agency action.

It is our opinion that General Leasing's letter to GSA of June 14 did not constitute a protest. The letter did not indicate that General Leasing considered GSA's actions to be in violation of procurement laws or regulations. Rather, General Leasing appeared to be concerned because GSA was departing from a standard course of business dealing.

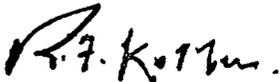
Even if the letter is considered a protest, General Leasing's protest to us is still untimely. Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. § 20.2(a)(1978), provides, in pertinent part, that:

"* * *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 provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section * * *."
(Emphasis added.)

"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 this case, the initial adverse agency action was the receipt and consideration of proposals on August 15, 1978, despite the concerns expressed in General Leasing's letter of June 14, 1978. Wakmann Watch Company, Inc., B-187335, January 28, 1977, 77-1 CPD 72; United States Steel Corporation, USS Chemical Division; Flight Systems, Inc., Rocket Jet/ARD Division, B-184105, August 19, 1975, 75-2 CPD 116; Advance Conversion Devices Co., B-182679, February 12, 1975, 75-1 CPD 93. Since General Leasing's protest to our Office was not filed until December 4, 1978, over 3 months later, the protest is untimely. Even though General Leasing and GSA may have continued to discuss the matter, it was obligatory for General Leasing to file its protest with us within 10 days of the initial adverse agency action.

Accordingly, our decision of January 5, 1979, is affirmed.


Deputy Comptroller General
of the United States