

11878 Lebow Proc II



DECISION

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

FILE: B-196514

DATE: October 31, 1979

MATTER OF: International Harvester CNG 02-136

[Protest Contending IFB Specifications Were Unduly Restrictive]
DIGEST:

1. Agency's opening of bids without acting on protest is initial adverse agency action, and subsequent protest to GAO filed more than 10 working days after bid opening is untimely.
2. Protest that potential bidder did not have sufficient time to bid filed more than 10 working days after basis of protest was known is untimely.

By letter received in this Office on October 19, 1979, International Harvester (International) protests the award of a contract under invitation for bids (IFB) F40650-79-B-0030, issued by the U. S. Air Force (Air Force), Arnold Air Force Station, Tennessee. International contends that the specifications unduly restrict competition and that it did not have sufficient time to submit a bid.

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International states that on September 26, 1979, the Air Force issued a telegraphic modification to the IFB in response to International's objection to the agency that the specifications restricted competition. International alleges the modification neither cured its objections nor extended the bid opening date which had been scheduled for September 26, 1979. Because the agency did not extend the bid opening time, International further contends that it did not have sufficient time in which to bid.

While International protested the alleged improprieties in the solicitation to the agency prior to bid opening, it did not file a protest with our Office

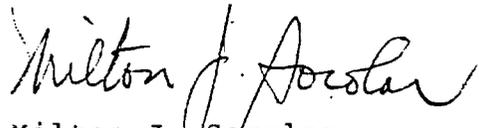
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until 16 working days after bid opening. The Air Force's opening of bids without satisfying International's protest is ~~adverse~~ agency action. See Jazco Corporation, B-192407, August 31, 1978, 78-2 CPD 162. Our procedures require that for a protest to be timely, it must be filed here within 10 working days of the initial adverse agency action. 4 C.F.R. § 20.1(a) (1979). Thus, we must dismiss this part of the protest as untimely.

We also find untimely International's protest that it did not have sufficient time in which to bid. Although International presents its protest as concerning the award to another bidder, of which it was not notified until October 12, the basis of the protest is that International did not have enough time to consider the amendment and submit a bid. International knew of this basis for protest on September 26, 1979, the bid opening date, but again did not protest until 16 working days later. Our procedures require that such a protest be filed not later than 10 working days after the basis for protest is known. ~~4~~ C.F.R. § 20.2(b)(2).

The protest is dismissed.



Milton J. Socolar
General Counsel