

Mr Alkon

14323

DECISION



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

Protest Alleging that Awardee Does not Have Equipment or Capacity to Perform Contract

FILE: B-199469

DATE: July 21, 1980

MATTER OF: Tempesta & Son Co. ← DLG 04946

DIGEST:

1. Protest filed with GAO more than 10 working days after protester receives notification of initial adverse action on protest filed with contracting agency is untimely and will not be considered on the merits.
2. Question of whether contractor has equipment required to perform contract is matter of bidder responsibility, an affirmative determination of which is not considered by GAO except in circumstances not present here.

DLG 04947

Tempesta & Son Co. (Tempesta) protests the award of a contract by the Department of the Air Force (Air Force) to Onondaga Environmental Systems, Inc. (Onondaga) under invitation for bids (IFB) No. F30635-80-B-0017 for refuse collection and disposal services at Griffiss Air Force Base, New York. The protester claims the awardee does not have either the equipment or capacity to perform the contract, and therefore is in violation of a solicitation provision stating that "By submission of this offer, the offeror hereby certifies that he either owns or has at his immediate disposal that equipment as specified in * * * the Statement of Work."

The record indicates that Tempesta initially protested this award to the contracting officer at Griffiss Air Force Base. On May 16, 1980, the contracting officer denied the protest.

OH352

112812

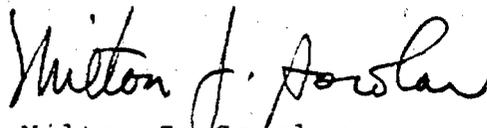
Our Bid Protest Procedures at 4 C.F.R. § 20.2(a) (1980) state:

"If a protest has been filed initially with the contracting agency, any subsequent protest to the GAO filed within 10 [working] days of formal notification of or actual or constructive knowledge of adverse agency action will be considered. * * *"

Tempesta's protest was not filed until July 3, 1980. Consequently, it is untimely. JRT&T Associates, B-197061, December 31, 1979, 80-1 CPD 4.

Moreover, even if this protest had been timely filed, we would not entertain it. The allegation that Onondaga does not have at its immediate disposal the necessary equipment to perform the contract involves the awardee's responsibility. We do not consider a contracting officer's affirmative determination of responsibility unless there is a showing of fraud or bad faith or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. Neither exception applies here.

Accordingly, the protest is dismissed and will not be considered on the merits.



Milton J. Socolar
General Counsel