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DECISION



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

FILE: B-206062

DATE: February 3, 1982

MATTER OF: Illinois Bronze Paint Co.

DIGEST:

The opening of bids without corrective action on a protest alleging defects in the solicitation constitutes initial adverse action on the protest, and protest filed more than 10 days after bid opening is untimely under 4 C.F.R. § 21.2(a).

Illinois Bronze Paint Co. (Illinois Paint) protests the impending award of a contract for aerosol lacquers by the Federal Supply Service, General Services Administration, under invitation for bids No. 10PR-ZNS-5065. We dismiss the protest.

Illinois Paint disputes the contracting officer's decision to amend the solicitation by deleting the commercial item description clause. Under that clause, a bidder certifies by signing its offer that its product meets the commercial item description in the solicitation and is offered for sale in the commercial marketplace. In addition, that clause requires the bidder to specify certain commercial information, including the names of three customers. Illinois Paint believes the deletion of the clause violates the provisions of Commercial Item Description A-A-665A (Lacquer-Aerosol), issued March 26, 1981, which requires bidder certification regarding product commerciality.

Illinois Paint protested the deletion of the clause to the contracting officer on December 4, 1981. Bid opening occurred on December 14, 1981, without amendment to the solicitation to meet Illinois Paint's protest. Our Bid Protest Procedures require that protests filed initially with the contracting agency be filed with this Office within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1981).

We have construed bid opening by an agency without corrective action on a protest to constitute adverse agency action. Rosendin Electric, Inc., February 20, 1981, 81-1 CPD 119.

This Office received Illinois Paint's letter of protest on January 12, 1982, which is 19 days after the date of bid opening. Clearly, Illinois Paint's protest is untimely.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel