

DECISION



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

FILE: B-211583

DATE: May 24, 1983

MATTER OF: FMC Corporation, Sweeper Operation

DIGEST:

A protest based on alleged improper specifications filed with GAO more than 10 working days after agency opened bids without responding to protester's pre-bid-opening protest to agency is untimely filed and will not be considered.

FMC Corporation, Sweeper Operation (FMC), protests the specifications of invitation for bids No. DAKF01-83-B-0012, issued by the Department of the Army.

GAO Bid Protest Procedures require that protests based on alleged apparent improprieties in the solicitation be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1983). Protests must be filed within 10 working days of initial adverse agency action in the event that a timely protest has been filed first with the agency. 4 C.F.R. § 21.2(a). The opening of bids, without the agency responding to the protest or taking any action to amend the specifications as the protester requests, is considered to be an initial adverse agency action. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD 414.

FMC protested to the Army prior to the March 25, 1983, bid opening. However, the Army opened bids as scheduled, without any action on the FMC protest. Since the protest here is dated April 19, 1983, and was filed (received) on April 22, 1983, it is clearly untimely and will not be considered on the merits.

The protest is dismissed.

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

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