

DECISION

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

*7/1/85
PL-II
30362*

FILE: B-218060 **DATE:** February 5, 1985
MATTER OF: United Technical Products, Inc. *AAT50161*

DIGEST:

Assuming that a protest concerning an alleged impropriety apparent in an invitation for bids was timely filed with the agency before bid opening, a subsequent protest to GAO filed more than 10 days after initial adverse agency action, the opening of bids, is untimely. Alternatively, a protest against an alleged impropriety in the solicitation first filed with the agency or GAO after bid opening is untimely.

United Technical Products, Inc. protests the alleged undue restrictiveness of a purchase description for anti-static carpets contained in General Services Administration solicitation No. FNP-F3-1577A, seeking Federal Supply Schedule contractors for this and related flooring items. We dismiss the protest.

Under the solicitation, GSA sought to award schedule contracts for a 1-year period beginning November 1, 1984, with a 1-year option period. To accomplish this, GSA issued the solicitation on March 31, 1984, and received bids as scheduled on May 16. Although United held an introductory item schedule contract for fiscal year 1984 and was sent a copy of the subject solicitation, the firm did not submit a bid.

According to the information United furnished with its protest, when GSA was preparing the purchase description it obtained United's views, but the resulting specifications excluded United's products. United advises that it notified GSA of the problem by telephone before bid opening, but no action was taken. United further advises that it subsequently discussed the suitability of its products with GSA,

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and finally, by letter of September 5, 1984, it requested that GSA revise the purchase description for anti-static carpet to permit consideration of United's products. United received no response to this request and on January 24, 1985, it filed a protest with this Office, objecting to any awards under the subject solicitation on the grounds that the purchase description improperly excluded its products.

Section 21.2(a)(1) of our Bid Protest Regulations provides that a protest based on an alleged impropriety apparent in an invitation for bids must be filed either with the contracting agency or this Office before bid opening. See 49 Fed. Reg. 49,417 (1984) (to be codified at 4 C.F.R. Part 21). If a timely protest has been filed initially with the agency, any subsequent protest to this Office filed within 10 days of actual or constructive notice of initial adverse action on the agency protest will be considered. Id. § 21.2(a)(2).

It is not clear from the protester's submission whether its protest to the agency was filed before or after the time set for bid opening, since the protester's telephone conversations with GSA may not have amounted to a protest and they are not so described. If, however, United's telephone conversations with GSA before bid opening constituted a protest, the protest to the agency was timely and the opening of the bids without amending the solicitation was adverse action on that protest. King-Fisher Co., B-209097, July 29, 1983, 83-2 CPD ¶ 150. Any subsequent protest to this Office therefore should have been filed within 10 days of the May 16 bid opening. On the other hand, because the protest concerns an alleged solicitation impropriety, if it was first filed by United's letter of September 5, 1984, well after bid opening, it was untimely and so too is the protest here. SCA Chemical Services, Inc., B-214408.2, June 8, 1984, 84-1 CPD ¶ 608.

The protest is dismissed.

Ronald Berger

for the Comptroller General
of the United States