



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DCX, Inc.
File: B-232929
Date: November 30, 1988

DIGEST

If a firm initially protests to the contracting agency, alleging an apparent impropriety in the solicitation, the agency's opening of bids, without taking the requested corrective action is initial adverse agency action, and a subsequent protest to the General Accounting Office more than 10 working days later is untimely.

DECISION

DCX, Inc., protests the allegedly defective specifications contained in invitation for bids (IFB) No. DLA400-88-R-4688, issued by the Defense Logistics Agency (DLA) for 45,712 convenience outlet assemblies and 5,585 electrical distribution boxes.

We dismiss the protest.

DCX filed a protest with the contracting officer against the allegedly defective specifications on August 18, 1988. Bid opening was held on August 19. DCX received a denial of its protest on September 19 and on September 29 it protested to our Office.

Under our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1988). Under our regulations, the opening of bids is identified specifically as an adverse agency action. 4 C.F.R. § 21.0(e). The fact that bid opening occurs without the agency taking any corrective action in response to the protest constitutes initial adverse agency action. Bender Shipbuilding & Repair Co., Inc., B-225578, Apr. 10, 1987, 87-1 CPD ¶ 398.

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Here, bid opening occurred on August 19, despite DCX's protest the day before to DLA. Therefore, DCX should have known DLA was not going to amend the IFB. This constituted initial adverse agency action and DCX had 10 working days after bid opening to protest to our Office. Accordingly, DCX's protest filed here on September 29, more than 10 days after bid opening on August 19, is untimely. To the extent that DCX's protest to our Office now raises new allegations of improprieties in the solicitation it is also untimely. 4 C.F.R. § 21.2(a)(1).

The protest is dismissed.

Christine S. Melody

for Robert M. Strong
Associate General Counsel