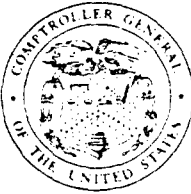


DECISION



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

60509

FILE: B-185352

DATE: February 12, 1976

MATTER OF: Jet International, Inc.

98617

DIGEST:

Protest not filed with either procuring agency or this Office within 10 working days after basis for protest (notification of technical unacceptability of proposal) was known is untimely and not for consideration on merits.

Jet International, Inc. (Jet), has protested against the award of any contract under request for proposals (RFP) No. WA5R-5-5234, issued by the Federal Aviation Administration (FAA).

The RFP was for the procurement of upgraded third generation en-route computer software. Jet's proposal was determined unacceptable as the nature and extent of the deficiencies in the proposal were found to have required major and substantial revision, rather than mere clarification. The specific deficiencies were enumerated by the contracting officer in a letter dated September 17, 1975, sent certified mail. The agency report on this matter, dated January 27, 1976, contains a copy of a receipt for the certified mail, signed by an employee of Jet on September 19, 1975.

On November 3, 1975, Jet sent a letter to the contracting officer, with a copy to the Comptroller General, stating that the disqualification of Jet from further consideration was "arbitrary and capricious, without substantive facts, and completely without merit." Further, the letter was captioned "Official BID PROTEST." By letter of November 10, 1975, Jet sent, in response to our request for clarification, its protest to this Office.

Whether Jet's letter of November 3, 1975, is considered a protest to the FAA or this Office, the protest must be considered untimely. The Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) of our Office encourage protesters to first seek resolution of their complaints with the contracting agency. Section 20.2, entitled "Time for filing," provides in pertinent part:

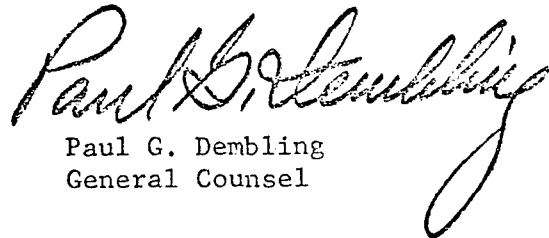
"(a) * * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In any case, a protest will be considered if filed with the General Accounting Office within the time limits prescribed in paragraph (b). (Emphasis supplied.)"

* * * * *

"(b)(2) * * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

The basis for Jet's protest was known on September 19, 1975, as evidenced by the signed receipt for the certified mail. Therefore, Jet's letter of November 3, 1975, was not filed with either the procuring agency or this Office within 10 working days after the basis for protest was known.

For the foregoing reasons, Jet's protest is untimely and not for consideration on the merits.


Paul G. Dembling
General Counsel