

DECISION



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

FILE: B-186242

DATE: May 11, 1976

60858
98964

MATTER OF: Powerine Oil Company

DIGEST:

Protest based on alleged impropriety in request for proposals which was first filed with agency but was not filed with GAO until more than 10 working days after initial adverse agency action and until after closing date for receipt of proposals is untimely and not for consideration.

By letter dated April 1, 1976 (received here on April 2), Powerine Oil Company has protested the award of a contract under request for proposals DSA600-76-R-0537, issued February 17, 1976, by the Defense Fuel Supply Center (DFSC). Powerine contends that the solicitation is defective in that it requires a contract term of 15 months rather than the normal term of 6 months.

Section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that protests based upon alleged improprieties in solicitations which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to that time. Moreover, section 20.2(a) of our Bid Protest Procedures provides that:

" * * * i/f 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. * * *"
(Emphasis added.)

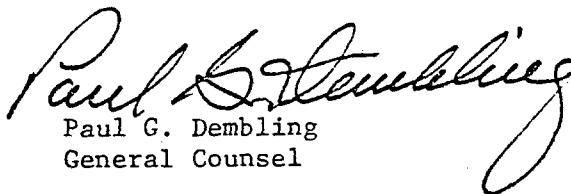
Here the record shows that by message of March 8, 1976, the protester requested DFSC to reconsider its decision to award 15-month contracts. By message dated March 12, 1976, DFSC rejected this request. Thereafter, Powerine filed a protest with our Office. However, the protest was not filed with this Office until April 2, which was more than 10 working days after the March 12 DFSC message, and was after the March 31, 1976, closing date for receipt of proposals.

Powerine contends, however, that oral communications were taking place continuously between Powerine and the agency, and as Powerine was informed each time that its arguments would be considered.

"ot of fairness to the Center, no protest was lodged until it became apparent that DFSC intended to do nothing concerning the problem when the time set for receipt of offers came and passed."

We recognize that a protester may consider an agency's initial adverse action to be ill-founded or inadequately explained, leading the protester to engage in further communication with the agency. As it then becomes difficult to identify the "final" adverse agency action, our Bid Protest Procedures require a protester to file its protest with our Office within 10 days of notification of initial adverse agency action. See 52 Comp. Gen. 20 (1972).

Accordingly, since Powerine's protest was not filed within 10 working days of notification of initial adverse agency action or prior to the closing date for receipt of proposals, as required by our procedures, the protest is dismissed as untimely.


Paul G. Dembling
General Counsel