

**DECISION**



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

60455

FILE: B-185688

DATE: January 30, 1976

MATTER OF: Applied Data Research, Inc.

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**DIGEST:**

Protest to GAO of award under request for proposals is untimely where filed more than 10 working days after protester's receipt of notification of adverse agency action on protest to agency.

Applied Data Research, Inc. (ADR) protests against the award of any contract(s) under request for proposals (RFP) 5710 issued by the U.S. Geological Survey (USGS), Department of the Interior.

The record furnished by ADR with its protest indicates that by telegram and letter dated October 31, 1975, ADR protested to the contracting officer against the award of any contract(s) under the subject RFP on the basis of alleged procedural errors committed by the USGS during the "pre-award period." ADR stated that contrary to the RFP and statements made at an October 2, 1975, negotiation session USGS reversed its previous position that best and final offers proposing cost type as well as firm-fixed-price contracts would be considered for award. Furthermore, ADR protested that its competitive position was weakened following the October 2 negotiation session because of information it revealed to another offeror as a result of its interpretation of certain statements made by the contracting officer at the session regarding the elimination from competition of small businesses for the non-set-aside portion of the contract.

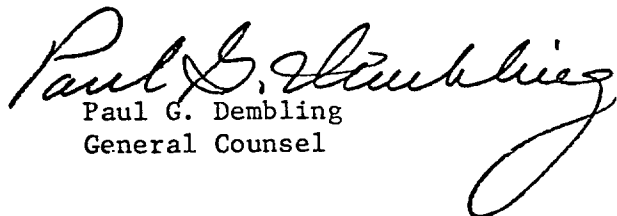
By letter dated November 7, 1975, USGS denied ADR's protest. ADR took exception to the statements in that letter and by letter dated November 12, 1975, reaffirmed its protest against any award under the RFP on the same grounds as before. On December 11, 1975, the "Chief, Branch of Procurement and Contracts" advised ADR that "since the facts of the matter do not substantially change in light of the information that you have submitted, my final decision is to deny your protest \* \* \*". By letter dated January 8, 1976, received in this Office on January 12, 1976, ADR filed a formal protest with our Office.

Standards applicable to the timeliness of protests are provided in section 20.2(a) of this Office's Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) in pertinent part, as follows:

"\* \* \* If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] 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 \* \* \*."  
(Emphasis supplied.)

Section 20.2(b) states that protests based on other than an alleged impropriety in the solicitation, must be filed within 10 [working] days after the basis of protest is known or should have been known, whichever is earlier.

As ADR's letter of protest to GAO was filed more than 2 months after USGS initially denied its protest, ADR has not complied with the time requirement of section 20.2(a) of our regulations. In this connection, we believe that USGS's letter of November 7, 1975, denying ADR's protest constitutes the "notification of adverse agency action" from which time ADR had ten working days in which to protest to GAO. While we realize that a protester may consider an agency's initial adverse agency action to be ill-founded or inadequately explained, leading the protester to engage in further correspondence with the agency, it is nevertheless obligatory that the protest be filed after notification of initial adverse agency action. 52 Comp. Gen. 20 (1972). In any event, it appears that ADR's protest to this Office was filed more than 10 days after it received USGS's final letter of December 11, denying its protest. Accordingly, ADR's protest is untimely and will not be considered on its merits.

  
Paul G. Dembling  
General Counsel