DECISION

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

FILE: B-187837 DATE: January 25, 1977

MATTER OF: Southern Crane & Monorail Co.

DIGEST:

Protest against resolicitation of procurement not filed within 10 working days from date of initial adverse agency action is untimely and not for consideration. Since protester did not protest allegedly ambiguous specifications in second solicitation prior to bid opening, this protest is also untimely and not for consideration.

Invitation for bids (IFB) No. DARA36-76-B-0010 was issued by the Departments of the Army and the Air Force, National Guard Bureau, U.S. Property and Fiscal Office for Pennsylvania (National Guard), for the procurement of an overhead crane. Bids were opened on April 12, 1976, and the Southern Crane and Monorail Company (Southern) was found to be the low bidder. Pursuant to a request of the contracting officer, Southern provided the National Guard with descriptive literature on the equipment that it intended to provide. By letter dated April 23, 1976, the contracting officer advised Southern that two of the items listed in its descriptive literature did not meet the advertised specifications. In its letter to the National Guard dated April 28, 1976, Southern maintained that the specifications were unduly restrictive. The contracting officer agreed the specifications were unnecessarily restrictive and by letter dated May 7, 1976, informed Southern that the IFB would be canceled and all bids rejected due to ambiguous specifications. The letter also indicated that the requirement would be readvertised. By letter dated May 12, 1976, Southern protested the contracting officer's decision to the Department of the Army. By letter dated August 10, 1976, the Department of the Army rejected Southern's protest. On November 18, 1976, we received Southern's letter dated November 11, 1976, protesting the rejection of all bids and readvertisement of the solicitation. Our Bid Protest Procedures provide in pertinent part:

> "* * * 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 * * *." 4 C.F.R. § 20.2(a) (1976)

Filing of the protest in our Office on November 1 , 1976 was untimely under the cited section. Consequently, Southern's protest against the cancellation of the IFB will not be considered.

Bids were opened under the second solicitation, IFB No. DAHA36-76-B-0030, on October 26, 1976. By letter dated November 1, 1976, to the National Guard and in its letter of November 11, 1976, to this Office, Southern also protested against any award under the second solicitation contending that the specifications were vague and ambiguous.

Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening are required to be filed prior to bid opening. 4C.F.R. § 20.2(b)(1)(1976). Thus, Southern's protest should have been filed prior to bid opening; therefore, that portion of its protest dealing with the second solicitation is also untimely and will not be considered.

Paul G. Dembling
General Counsel