

01557

**DECISION**



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

**FILE: B-188019**

**DATE: February 24, 1977**

**MATTER OF: National Flooring Company**

**DIGEST:**

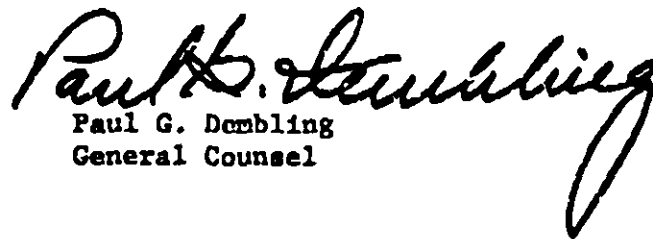
Protest against alleged improprieties in specification filed after bid opening date is untimely and not for consideration; further, protest against award to low bidder is untimely as not filed within 10 working days after activity initially notified protester that its protest was without merit and that award would be made.

Solicitation No. AT/FS 18466 was issued by the General Services Administration, Region 4, in pertinent part, for various colored plastic tiles. Bid opening was set for November 10, 1976. The National Flooring Company (National) protested award, both before and after award, to the low bidder on group Nos. III and IV for the following reasons. First, it contended that the low bidder cannot supply the necessary tiles in eight standard colors, as required in the solicitation, since that bidder's supplier only produces five, or at best six, standard colors. Second, it contended that no evidence shows the nonstandard 9" X 9" tiles to be normally or regularly produced and that, in any event, the low bidder did not really commit itself in its bid to supply these and, therefore, intends to circumvent any requirement for this size that the Government may have. Third, the failure by the contracting officer to separate the standard from the nonstandard size tiles under each group so as to permit separate bidding on each type and size and the failure to include the Government's estimated needs for each were protested.

As regards the third basis of the protest, the manner in which the solicitation was drafted, the Bid Protest Procedures, specifically 4 C.F.R. § 20.2(b)(1) (1976), require that any protest against alleged improprieties in a procurement specification which are apparent, as here, before the bid opening date be filed prior to that date. It does not appear that National raised this issue prior to bid opening.

B-188019

Consequently, the raising of it now is untimely, and that basis of the protest is not for consideration. In any event, we have been advised that during a November 23, 1976, telephone conversation between the contracting officer and the president of National all aspects of the protest were discussed and the latter was advised that the low bidder would supply eight standard colors for each size of tile, as confirmed by its supplier, and that since the protest was considered to have no merit award would be made to the low bidder. A letter in this regard from the contracting officer had been sent to National on November 22, 1976. The Bid Protest Procedures at 4 C.F.R. § 20.2(a) (1976) require that a protest must be filed within 10 working days of the day that the protester receives formal notification of the initial adverse agency action or of the date that actual or constructive knowledge thereof was acquired. While National engaged in further correspondence with the agency which resulted in another denial by the contracting officer in a letter of December 10, 1976, the initial adverse action occurred on November 23. 52 Comp. Gen. 20, 22-23 (1972). Our Office did not receive the National protest until December 15. As this is more than 10 working days after November 23, the protest on all bases was untimely filed here and is not for our consideration.

  
Paul G. Dembling  
General Counsel