

DOCUMENT RESUME

03263 - [A2213310]

[Untimely Protest against Refusal of Agency to Accept High Offer for Surplus Property]. B-189500. August 5, 1977. 2 pp.

Decision re: Montgomery Ward and Co., Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1970).

Contact: Office of the General Counsel; Procurement Law II.

Budget Function: General Government; Other General Government (806).

Organization Concerned: General Services Administration.

Authority: Freedom of Information Act. 4 C.F.R. 20.2(b)(2).

B-185148 (1976).

The protester objected to the rejection of their high bid for a surplus property, arguing that the adverse agency action which started the time for filing a protest should be determined to be the date on which the protester received the second agency appraisal on the property or the denial of the request for that appraisal. The protest was filed with GAO more than 10 days after the protester was advised by the agency of the bid rejection and the agency's intention to resolicit and was untimely. (Author/SC)

Roger Ayer
Proc. II

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DECISION



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

FILE: B-189500

DATE: August 5, 1977

MATTER OF: Montgomery Ward and Company, Inc.

DIGEST:

Protest of agency's refusal to accept high offer for surplus property filed with GAO more than 10 days after protester was advised by agency of the rejection of its bid and its intention to resolicit is untimely and not for consideration.

Montgomery Ward and Company, Inc. (MW) protests the General Services Administration's (GSA) refusal to accept MW's high offer of \$1,200,000.00 for a surplus property located in Pasadena, California. Bids were opened on March 10, 1977, with MW the highest bidder. By letter of March 11, 1977, GSA notified MW that its bid was the highest received but was still below GSA's estimate of the value of the property. GSA therefore afforded MW an opportunity to increase its bid, provided the increased bid was submitted by March 18, 1977. The deadline for submission was later extended to March 23, 1977. Instead of increasing its bid MW chose to attempt to convince GSA that its estimate of the property's value was erroneous and that MW's offer was reasonable. GSA on May 4, 1977, advised MW that its offer was below GSA's estimate and accordingly not accepted. Following its receipt of the May 4, 1977, letter MW continued its efforts to convince GSA of the reasonableness of its price. On June 9, 1977, MW received a letter from GSA advising MW that GSA planned to offer the property again on the basis of a new appraisal. On July 1, 1977, MW's protest was filed with this Office.

MW has advised that on July 6, 1977, a Freedom of Information Act (FOIA), request was filed with GSA which sought access to GSA's appraisals, one prior to bid opening and the second subsequent thereto, and that the second appraisal was close in value to the amount bid by MW. It is MW's position:

"* * * that the 'adverse agency action' (4 C.F.R. 20.2) which starts the time for filing a protest should be gaged from our receipt of the second GSA appraisal or the denial of the request for that appraisal. Ward's will have actual knowledge for the first time that our bid was within the range of the second appraisal. If GSA refuses to give Ward's

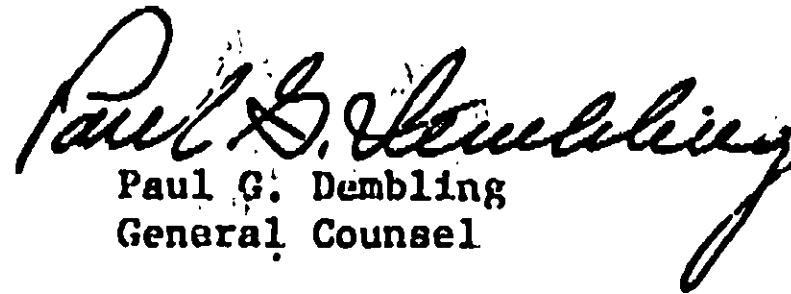
B-189500

the appraisal then Ward's will have no further means of knowing whether its bid should have been accepted. In either instance GSA's action on the FOIA request will 'trigger' the protest period."

Notwithstanding MW's argument to the contrary, we believe that its protest to GAO is untimely, it being lodged more than 10 days after the basis of protest was known or should have known, 4 C.F.R. 20.2(b)(2) (1977). This is true even if the time is counted not from GSA's May 4, 1977 letter, but from GSA's June 9, 1977, communication which indicated Government plans to moot all earlier appraisals of the property by conducting yet another sale.

The 10-day time period prescribed by 4 C.F.R. 20.2(b)(2) is not tolled pending a protester's gathering of all the facts it deems necessary to argue its protest. A firm must protest within 10 days after it is aware that a basis for protest exists. For example, in this case MW knew that its bid was rejected on either May 4 or June 9. Once the protest is filed there is ample opportunity for the protester to develop its case. See National Construction Company, B-185148, March 23, 1976, 76-1 CPD 192.

Accordingly, the protest is not for consideration by this Office.


Paul G. Dembling
General Counsel