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DECISION



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

FILE: B-191026

DATE: January 31, 1978

MATTER OF: Kenney Refrigeration

DIGEST:

Protest to GAO of split award under invitation for bids is untimely where filed more than 10 working days after protester's receipt of notification of adverse agency action on initial protest to agency, notwithstanding fact that protester appealed initial denial to agency prior to protest to GAO.

By letter filed in this Office on January 3, 1978, Kenney Refrigeration (Kenney) has protested a split award under invitation for bids (IFB) No. NASO-7-35181, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA).

Kenney initially filed a timely protest of the split award with the contracting officer by letter dated July 22, 1977. This protest was denied by letter dated August 1, 1977, and Kenney then appealed the decision to the NOAA Northwest Administrative Service Office. This appeal was denied by letter dated December 12, 1977.

Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1977), provides, in pertinent part, that:

"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 * * * (Emphasis supplied.)

Since Kenney's protest to GAO was filed more than 5 months after NOAA initially denied its protest, Kenney has not complied with section 20.2(a). While we realize that a protester may consider an agency's initial adverse action to be ill-founded or inadequately explained,

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leading the protester to engage in further correspondence with the agency, it is nevertheless obligatory that the protest to GAO be filed after notification of initial adverse agency action. 52 Comp. Gen. 20 (1972); Applied Data Research, Inc., B-105688, January 30, 1976, 76-1 CPD 69.

Accordingly, the protest is untimely and not for consideration on the merits.

Paul G. Dembling
Paul G. Dembling
General Counsel