

DECISION



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

*J. Roberts
Proc II*

7530

FILE: B-192042

DATE: August 31, 1978

MATTER OF: U.S. Air Tool Co., Inc.

DIGEST:

Protest filed with GAO more than 10 working days after actual knowledge of initial adverse agency action is untimely and not for consideration. While protester may have been unaware of protest procedures, procedures are published in Federal Register and protester is charged with constructive notice thereof.

U.S. Air Tool Co., Inc. (Air Tool) protests the award of certain contract items under invitation for bids (IFB) No. FTAN-E8-10039-A-3-29-78 for the procurement of various mechanical tools, issued by the General Services Administration (GSA).

On March 9, Air Tool informed GSA of certain discrepancies in the part numbers of three items on the IFB bid schedule. GSA notified Air Tool on March 13 that the discrepancies would be corrected through issuance of an IFB amendment, and that a new bid opening date would be established in the forthcoming amendment. GSA subsequently issued the amendment on March 14 which extended the opening date to April 12, 1978.

Air Tool alleges it did not receive the March 14 amendment and that it first became aware of its issuance as a result of a phone conversation with the contracting officer in the late afternoon of April 12, after the 2:30 p.m. bid opening time. During that conversation Air Tool stated its intention to protest and later that day confirmed its oral intentions by dispatching a mailgram to GSA which objected to the

award of the three items in question and urged cancellation of the IFB. GSA responded by letter dated April 21, and received by Air Tool on April 26, indicating what actions it had taken to insure that the issuance of the amendment was proper, noting that Air Tool was on the mailing list and that it had no explanation for Air Tool's failure to receive the amendment. GSA's letter concluded by stating that it would proceed with evaluation and award of the contested items under the existing IFB.

On April 28, Air Tool dispatched another letter to GSA setting forth its continued objections to GSA's actions. It was not until May 30, however, that a letter of protest from Air Tool dated May 23 was received and filed with the GAO.

Our Bid Protest Procedures, at 4 C.F.R. § 20.2(a) (1978), require that letters protested initially to the procuring agency must be subsequently protested to this Office within 10 working days of the protester's receiving actual or constructive notice of "initial adverse agency action." We believe that Air Tool's receipt on April 26 of the GSA letter which responded to its agency protest in a manner adverse to Air Tool's objectives constituted an initial agency action from which Air Tool then had the prescribed 10 days in which to "appeal" to GAO. Air Tool's additional April 28 correspondence to GSA subsequent to receipt of the initial adverse action did not toll the running of the 10 days. Kenney Refrigeration, B-191026, January 31, 1978, 78-1 CPD 87. Consequently, Air Tool's failure to file its protest with GAO until May 30 has rendered it untimely and not for consideration on the merits.

While it is unfortunate that Air Tool may have been, as it alleges, unaware of our Bid Protest Procedures and their time constraints, this lack of knowledge is not sufficient justification for considering an otherwise untimely protest. Our bid protest procedures have been published in the Federal Register

(40 Fed. Reg. 17979, April 24, 1975), and protesters must be charged with constructive notice of their contents. Washex Machinery Corporation, B-190726, March 22, 1978, 78-1 CPD 227 and decisions cited therein.

Accordingly, the protest is dismissed.

Paul G. Dembling
Paul G. Dembling
General Counsel