

11,155

76-CG

DECISION



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

B-195489

FILE:

DATE: August 16, 1979

San Jose Rug Co.

MATTER OF:

DLG 2598

DIGEST:

It is not clear protest against alleged improprieties was timely filed prior to bid opening. Even if protest was timely filed with procuring agency prior to bid opening, protest to GAO is untimely and not for consideration since it was filed more than 10 days after contracting agency opened bids despite pending protest.

San Jose Rug Co. (San Jose) [^{OF}protests the wage rate determination and other alleged improprieties] in solicitation No. GSD-9DPR-90016, issued by the General Services Administration (GSA). AGC00017

The procurement is for rug and carpet repairs for several States during the period August 1, 1979, through July 31, 1980. The solicitation was issued on May 14, 1979, which scheduled bid opening for 2:00 p.m., June 12, 1979. Bid opening was extended to June 26 by amendment No. 1. San Jose states that up to and including the day of bid opening it continued to "argue" with GSA about the alleged improprieties. GSA opened the bids on schedule. On July 19 San Jose filed a protest with our Office.

Section 20.2 of our Bid Protest Procedures, 4 C.F.R. part 20 (f978), provides in pertinent part as follows:

"(a) * * * If a protest has been filed initially with the contracting agency, any subsequent protest to

~~006179~~

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. * * *

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals."

It is not clear whether San Jose filed an initial protest against the alleged improprieties in the solicitation with GSA prior to bid opening. Even if San Jose filed a protest prior to bid opening, GSA's decision to open the bids despite the pending protest constituted initial adverse agency action. For the protest to be considered by our Office it should have been filed within 10 (working) days (July 11) after the initial adverse agency action. Since San Jose did not file its protest with our Office until July 19, it is untimely and not for consideration.

Therefore, the protest is dismissed.

Harry R. Jan Cleave
for Milton J. Socolar
General Counsel