

DECISION



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

FILE: B-198391

DATE: May 1, 1980

MATTER OF: Autotronic Products, Inc.

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DIGEST:

Protest of alleged impropriety in solicitation must be filed prior to bid opening, and if so filed, agency's opening of bids without taking corrective action constitutes adverse action on protest within meaning of GAO protest procedures. Subsequent protest filed with GAO more than 10 days after protester learns of bid opening is therefore untimely and will not be considered on merits.

Autotronic Products, Inc. (API) ^{Against} protests the award of ~~any~~ contract for engine analyzers under solicitation No. DAAA09-80-B-4218 issued by the Department of the Army. API contends that a solicitation provision requiring bidders to have sold 1,000 analyzers commercially for the past 3 years is restrictive and denies API the opportunity to submit a bid on an item which is well within its capability to produce competitively.

API requested the Army to delete the alleged restrictive provision on February 20, 1980. According to the protester, the Army did not reply and conducted bid opening on March 3 as scheduled. API subsequently filed a protest here on April 8.

The protest is untimely. If a protest has been filed initially with a contracting agency, any subsequent protest to our Office must be filed within 10 days

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after the protester learns of initial adverse action on the protest by the contracting agency. 4 C.F.R. § 20.2(a)(1980). The agency's opening of bids without taking corrective action constitutes adverse agency action. Jazco Corporation, B-192407, August 31, 1978, 78-2 CPD 162. Thus, if we view API's February 20 letter to the Army as a protest, API's subsequent protest filed in this Office more than a month after the March 3 bid opening is untimely. If, on the other hand, the February 20 letter is not viewed as a protest to the agency, the protest here is nonetheless untimely because API would not have filed a protest concerning an alleged solicitation deficiency prior to bid opening as required by our Procedures, 4 C.F.R. § 20.2(b)(1).

The protest accordingly is dismissed.

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