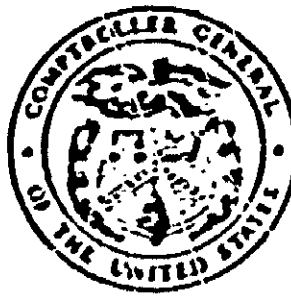


DECISION



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

Handwritten: 12/296

FILE: B-211468

DATE: May 6, 1983

MATTER OF: Window Supply Co.

DIGEST:

Protest filed with CAO more than 10 working days after initial adverse agency action (bid opening) on protest filed with contracting agency is untimely and not for consideration notwithstanding its submission to GAO by certified mail, since certified letter was not mailed not later than the fifth day prior to the final date for timely filing of a protest with GAO.

Window Supply Co. (Window Supply) protests invitation for bids No. DABT02-83-B-0016, issued by Fort McClellan, on the basis that the specifications are restrictive.

We dismiss the protest as untimely filed with our Office.

Window Supply protested the restrictiveness of the specifications to the contracting agency on February 14, 1983. The agency, apparently without formally responding to the protest, opened bids on March 24. Window Supply then protested to our Office by a certified letter, which was mailed on April 6 and received on April 13.

Our Bid Protest Procedures require that where an initial protest has been filed with the contracting agency, in order to be considered by our Office, any subsequent protest to our Office must be filed within 10 working days of the protester's actual or constructive knowledge of the initial adverse agency action taken on that protest. 4 C.F.R. § 21.2(a) (1983). Where alleged improprieties in a solicitation are, as here, properly protested prior to bid opening, we have held that the opening of bids without any action

having been taken on the protest constitutes constructive notice of initial adverse agency action. Ferguson-Williams, Inc.; Mark Dunning Industries, Inc., B-208927, November 1, 1982, 82-2 CPD 394. The Window Supply protest was not filed with (received by) our Office within 10 working days of bid opening.

While our Bid Protest Procedures permit consideration of a late-filed protest where the protest is submitted to our Office by a certified letter mailed not later than the fifth day prior to the final date for the timely filing of a protest with our Office, 4 C.F.R. § 21.2(b)(3) (1983), this exception to the general rule is not for application here. In order to be timely, the protest should have been received by our Office on April 7. Window Supply mailed its protest by certified mail on April 6, less than 5 days prior to April 7.

The protest is dismissed.

Harry R. Var Cleve
Harry R. Var Cleve
Acting General Counsel