

DECISION

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

Woods

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FILE: B-214408.2**DATE:** June 8, 1984**MATTER OF:** SCA Chemical Services, Inc.**DIGEST:**

Assuming that a protest concerning an alleged impropriety apparent in an invitation for bids was timely filed with the agency before bid opening, a subsequent protest to GAO filed more than 10 days after both the opening of bids and receipt by the protester's attorney of a copy of the agency's formal denial of the protest is untimely.

SCA Chemical Services, Inc. protests the provisions of invitation for bids (IFB) No. DACW45-83-B-0129, issued by the U.S. Army Corps of Engineers, Omaha District, for the removal of hazardous waste material from the Re-Solve Inc. Superfund site near Dartmouth, Massachusetts. We dismiss the protest as untimely.

SCA did not submit a bid in response to the IFB. Rather, by letter dated November 22, 1983, the date bids were opened, SCA filed a protest with the Corps contending that it effectively was prevented from submitting a bid because, under the terms governing the operation of its landfill, it could not accept the type of material found at the Re-Solve Inc. site. The protester suggested that the agency amend the solicitation to allow for disposal of the material by incineration. The agency denied the protest by decision dated February 9, 1984. SCA filed its protest with this Office on May 1.

Our Bid Protest Procedures provide that a protest based on an alleged impropriety apparent in an invitation for bids must be filed with either the contracting agency or this Office prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1984). If a timely protest has been filed initially with the agency, any subsequent protest to this Office filed within 10 days of actual or constructive notice of initial adverse action on the agency protest will be considered. Id. § 21.2(a).

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It is not clear from the protester's submission whether its protest to the agency was filed before or after the time set for bid opening. Since the protest concerns an alleged, apparent solicitation impropriety, however, if the protest to the agency was filed after bid opening, it was untimely, and so too is the protest here. See Jarrett S. Blankenship Co., B-213270, Oct. 25, 1983, 83-2 CPD ¶ 504. On the other hand, if the protest to the agency was timely, the opening of bids without amending the solicitation constituted initial adverse agency action on the protest. King-Fisher Company, B-209097, July 29, 1983, 83-2 CPD ¶ 150. Any subsequent protest here should have been filed within 10 days of bid opening. Id.

In any event, the protest to this Office comes well after the agency formally denied the protest by decision of February 9. Although the protester states that "SCA did not receive actual or constructive notice of the adverse protest decision until very recently," the agency informs us that it sent a copy of its decision to SCA's attorney by certified mail and that the return receipt indicates receipt at the attorney's office on March 26. Thus, it appears that at least by March 26 the protester had notice of the agency's denial of its protest. The May 1 protest to this Office, filed more than 10 days after March 26, is obviously untimely and will not be considered. Radix II, Inc., B-212718, March 1, 1984, 84-1 CPD ¶ 256.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel