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DECISION



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

FILE: B-215625

DATE: July 20, 1984

MATTER OF: Leon's Auto Repair

DIGEST:

Where a firm initially protests an alleged solicitation defect to the contracting agency prior to bid opening, the opening of bids as scheduled without taking any corrective action in response to the protest constitutes initial adverse agency action and a subsequent protest to GAO not filed within 10 working days thereafter is untimely.

Leon's Auto Repair (Leon's) protests any award of a contract under invitation for bids (IFB) 7PSF-52529/P5/7SB issued by the General Services Administration (GSA).

We dismiss the protest.

By letter of April 27, 1984, Leon's protested to GSA, alleging that the solicitation was unduly restrictive of competition and did not reflect the government's minimum needs. Information furnished in Leon's protest correspondence shows that bids were opened on or prior to May 23, 1984. At GSA's request, Leon's provided further detail concerning its protest by letter dated May 23, 1984. By letter dated June 4, 1984, received by Leon's on June 8, 1984, GSA denied Leon's protest. Leon's letter of protest to our Office, dated June 22, 1984, was received by our Office on June 25, 1984.

Under our Bid Protest Procedures, 4 C.F.R. §§ 21.2(a) and (b)(1) (1984), protests concerning defects apparent in a solicitation must be filed with our Office or the contracting agency prior to bid opening. If a protest is filed initially with the contracting activity, we will consider a subsequent protest to our Office only if it is filed here within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. The fact that bid opening occurs without the agency taking any corrective action in response to a protest constitutes initial adverse agency action. King-Fisher Company, B-209097, July 29, 1983, 83-2 C.P.D. ¶ 150; Bilsom

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International, Inc., B-203523, Mar. 8, 1982, 82-1 C.P.D. ¶ 206. Moreover, the fact that a protester continues to pursue its protest with the contracting agency does not alter this rule. Allis-Chalmers Corporation, B-214388, Mar. 16, 1984, 84-1 C.P.D. ¶ 320. Here, Leon's protest was untimely filed in our Office on June 25, 1984--substantially more than 10 working days after bid opening.

Harry R. Van Cleve
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Acting General Counsel