

DECISION

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

Warger
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FILE: B-216316

DATE: September 12, 1984

MATTER OF: Western Waste Management

DIGEST:

Protest filed with GAO more than 10 working days after adverse action by contracting agency on protest filed with it is untimely under GAO Bid Protest Procedures. When the adequacy of specifications is challenged prior to bid opening, the bid opening constitutes adverse agency action.

Western Waste Management protests the inadequate specifications of invitations for bids No. 1200-84-15 issued by the National Park Service in connection with a cost comparison to be made pursuant to Office of Management and Budget Circular A-76. We find the protest to be untimely.

The protester's submission indicates that it filed a timely protest with the agency, that after the bid opening date the protester inquired as to the status of its protest, and that nearly a month after that the agency informed the protester that "no award will be made under this solicitation because no bids were received," thus rendering the protest "moot". More than 3 weeks later Western filed its protest here.

Our Bid Protest Procedures permit a protest to be filed initially with the contracting agency, but require that any subsequent protest to this Office be filed within 10 working days of when the protester knows or should know of the adverse agency action on the protest. 4 C.F.R. § 21.0(b) (1984). An agency's proceeding with bid opening in the face of a protest alleging solicitation deficiencies constitutes such adverse action. Bernard Franklin Co., B-207126, May 3, 1982, 82-1 CPD ¶ 414. Therefore, Western's 10 days to file a protest here started running some time prior to mid-July when, the protester indicates, bid opening was to take place. Obviously, the protest filed here on September 6 was not filed within the required period.

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Even if, for some reason, Western had a legitimate reason to not view the scheduled bid opening as adverse action on its protest, the protest filed here would still be untimely since the September 6 filing was not within 10 days of when Western received the agency's letter describing the protest as moot.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel