

DECISION

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

FILE: B-216826

DATE: October 29, 1984

MATTER OF: Silent Hoist & Crane Co., Inc.

DIGEST:

Where firm initially protested allegedly unduly restrictive specifications to contracting agency prior to bid opening, opening of bids is adverse agency action on protest and subsequent protest to GAO filed more than 10 working days after protester's actual or constructive knowledge of bid opening is untimely.

Silent Hoist & Crane Co., Inc. protests the provisions of invitation for bids No. DLA-003-84-B-0020, issued by the Defense Logistics Agency (DLA) for a 25,000-pound capacity forklift truck to be shipped to a government depot in Ogden, Utah. Silent Hoist alleges that the specifications are unduly restrictive. We dismiss the protest as untimely.

By telex of September 10, 1984 and letter of September 11, Silent Hoist protested the specifications to the agency and requested that they be modified. However, DLA has informally advised us that no amendment was issued and that bids were opened as scheduled on September 18. Silent Hoist filed this protest with our Office on October 15.

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 must be filed within 10 working days of actual or constructive notice of initial adverse action on the agency protest. Id. § 21.2(a).

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The opening of bids without amendment of the solicitation constituted initial adverse agency action on Silent Hoist's protest to the contracting agency. The Trane Co., B-213332, Mar. 15, 1984, 84-1 CPD ¶ 309. Since Silent Hoist did not file this protest with our Office until almost a month after the scheduled bid opening, it is untimely and will not be considered on the merits.

The protest is dismissed.

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