

# DECISION



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

Goadrich  
30481

FILE: B-218159

DATE: February 20, 1985

MATTER OF: Second Growth Forest Management,  
Inc.

## DIGEST:

When protest is filed initially with contracting agency prior to bid opening, agency's opening of bids without responding to the protest constitutes adverse agency action on the protest, so that a subsequent protest to GAO must be filed within 10 working days thereafter.

Second Growth Forest Management, Inc. protests three specifications in the Forest Service's Invitation for Bids (IFB) No. R6-12-85-501. We dismiss the protest.

Second Growth states that it initially protested to the Forest Service on January 5, 1985. Bid opening occurred on January 8, despite the pending protest. Second Growth protested to this Office on February 11, shortly after receiving a letter from the agency formally denying the protest.


Our Bid Protest Regulations require that, if a protest is filed initially with the contracting agency, any subsequent protest to the GAO be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action on the protest. 49 Fed. Reg. 49417, 49420 (1984) (to be codified at 4 C.F.R. § 21.2(a)(3)). An agency's proceeding with bid opening in the face of a protest alleging solicitation deficiencies constitutes such initial adverse action. Western Waste Management, B-216316, Sept. 12, 1984, 84-2 CPD ¶ 289. Furthermore, the fact that bid opening occurs is constructive notice that the agency rejects a pending protest. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD ¶ 414.

031269

B-218159

Second Growth's 10 working days to file its protest with this Office, therefore, began to run on January 8, 1985, when bids were opened. The fact that the agency, subsequent to bid opening, formally denied the protest does not change that requirement. Since this protest was filed on February 11, 1985, it is untimely.

The protest is dismissed.

  
for the Comptroller General  
of the United States