

# DECISION



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

**FILE:** B-219052                      **DATE:** October 4, 1985  
**MATTER OF:** Anthony R. Teel

## DIGEST:

1. Protest that contracting agency should have requested and incorporated into its invitation for bids (IFB) a Davis Bacon Act wage rate determination for an additional labor classification is based on an alleged impropriety apparent in the IFB, and must be filed before bid opening to be timely.
2. Protester's pre-bid opening oral discussions with contracting agency officials did not constitute a timely agency protest since oral protests are no longer provided for under the Federal Acquisition Regulation.

Anthony R. Teel, on behalf of W. A. Strom Contracting, Inc., protests that the Davis Bacon Act wage determination decision incorporated into Forest Service invitation for bids (IFB) No. R1-17-85-15 incorrectly fails to provide a classification for ironworkers. We dismiss the protest as untimely.

The IFB requested bids for the installation of a prefabricated tree cooler unit and the erection of a warehouse for the Nez Perce National Forest in Elk City, Idaho. The IFB incorporated a Department of Labor (DOL) wage determination decision, No. ID-85-5013 (dated Feb. 15, 1985 and published at 50 Fed. Reg. 8567, Mar. 1, 1985), which provided basic hourly wage rates to be paid for various labor classifications. The decision did not provide a classification for ironworkers.

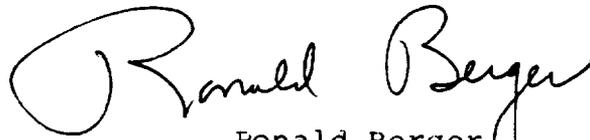
Teel contends that the work to be performed properly requires the services of ironworkers and protests, in effect, that the Forest Service should have recognized this and proposed such a classification to DOL. Assuming DOL would have then issued a wage rate for ironworkers, Teel argues that such a rate should have been incorporated in the IFB.

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We find Teel's protest untimely filed. The record reveals that Teel discussed this matter with the Forest Service contracting officer and contract specialist prior to the May 29, 1985 bid opening. Teel stated that he would protest if the IFB was not amended to provide for iron-workers. After attending the bid opening, Teel hand-delivered to the Forest Service contract specialist a copy of his written protest addressed to us. We received Teel's protest after bid opening.

Our Bid Protest Regulations require that protests, such as this one, based on alleged improprieties apparent in a solicitation, be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1985). Teel's formal protest was not filed until after bid opening, and is therefore untimely. Although we recognize that Teel indicated his dissatisfaction to the agency prior to bid opening, we cannot view Teel's oral discussions with the Forest Service as constituting a protest to the agency since oral protests are no longer provided for under the Federal Acquisition Regulation (FAR). FAR, § 33.101, as added by Federal Acquisition Circular No. 84-6, 50 Fed. Reg. 2268-2270 (Jan. 15, 1985).

Accordingly, the protest is dismissed.



Ronald Berger  
Deputy Associate  
General Counsel