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DECISION



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

FILE: B-190430 **DATE:** February 17, 1978
MATTER OF: Freund Precision, Inc.

DIGEST:

Protest concerning propriety of non-responsiveness determination based on protester's failure to acknowledge receipt of solicitation amendment prior to bid opening will not be considered on merits since protest was filed more than 10 days following notification of initial adverse agency action, and protester fails to assert any facts that would invoke exception to timeliness rules.

Freund Precision, Inc., protests the award by the Aeronautical Systems Division, Wright-Patterson Air Force Base (Air Force), under invitation for bids (IFB) F33657-77-B-0581, of a contract for brake pressure test set to its competitor, King Nutronics Corporation.

The undisputed facts show that Freund failed to mail its acknowledgment of amendment 0003 to the solicitation until the day after bid opening, although the amendment clearly indicated that acknowledgment must be received prior thereto. Freund's offer was therefore determined to be nonresponsive, and it received notification to this effect on September 9, 1977. Freund protested the determination to the contracting officer, and it received notice of denial of the protest on September 27, 1977. Freund's protest to this Office was received on October 27, 1977, 1 month later.

Section 20.2 of our Bid Protest Procedures, 4 C.F.R. § 20.2 (1977), states in pertinent part that:

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"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification * * * of initial adverse agency action will be considered * * *."

Freund was apparently dissatisfied with the initial agency rejection of its protest and sought reconsideration, receiving the final Air Force response on October 7, 1977. As we have stated, " * * * it is nevertheless obligatory that the protest be filed after notification of initial adverse agency action." Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29; Rowe Industries, B-185520, January 8, 1976, 76-1 CPD 13; 52 Comp. Gen. 20 (1972). In any event, the instant protest was filed more than 10 days after receipt of Freund's last communication from the Air Force. In its response to the agency report raising the timeliness issue, Freund makes no claim of circumstances that would invoke one of the exceptions to our timeliness rules as set out in section 20.2(c) of our Procedures.

Accordingly, the protest is dismissed as untimely.

for 
Paul G. Dembling
General Counsel