

DECISION



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

50735

97242

FILE: B-183746

DATE: June 2, 1975

MATTER OF: Datum, Inc.

DIGEST:

Firm protesting rejection of its proposal as outside competitive range is not entitled under 4 C.F.R. 20.2(a) to review of protest on merits since protest was filed more than five days after protester's receipt of notice of adverse agency action.

Datum, Inc. (Datum), protests the rejection of its proposal as unacceptable and outside the competitive range under RFP F04703-75-R-0009 issued on November 1, 1974, for a central timing signal generator by the Space and Missile Test Center (SMTC), Vandenberg Air Force Base, California.

On March 13, 1975, SMTC gave notice to Datum that its proposal was outside the competitive range since it:

"a. Did not reasonably address the essential and critical requirements of the solicitation thereby presenting no approach to be evaluated by the Government.

"b. Did not provide sufficient cost data and basis for estimate thereby precluding evaluation and consideration as to cost realism.

"c. Contained major technical or business deficiencies/omissions which could not reasonably be corrected without a complete revision of the proposal."

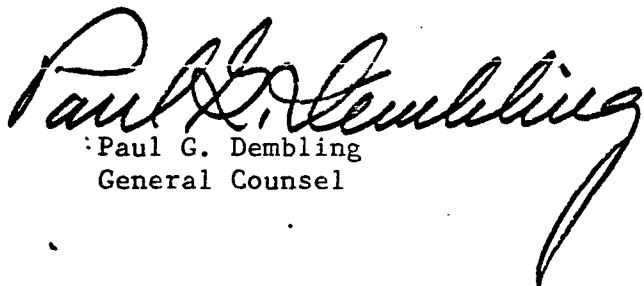
On March 18, 1975, Datum appealed to the procuring activity asserting that its proposal was in full compliance with the terms of the RFP. By letter dated April 2, 1975, SMTC informed Datum that its proposal was still considered unacceptable.

By letter of April 23, 1975, Datum filed its protest with this Office. 4 Code of Federal Regulations § 20.2(a) (1974 ed.) provides in pertinent part that:

"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 5 days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely. The term 'filed' as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be and protesters are, therefore, cautioned that protests should be transmitted or delivered in that manner which will assure earliest receipt."

Datum's protest letter of April 23, was not received in this Office until April 28, 1975. Therefore, it appears that the protest was filed in this Office more than five working days from the date of Datum's receipt of the agency's April 2 letter notifying the protester that its appeal had been denied.

Accordingly, the protest is untimely and will not be considered on its merits.


Paul G. Dembling
General Counsel