

DOCUMENT RESUME

02356 - [A1372360]

[Untimely Protests against Aircraft Parts Contract Award].
B-188668. May 11, 1977. 2 pp.

Decision re: Rotair Industries; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Coast Guard; D. Moody & Co., Inc.

Authority: 4 C.F.R. 20.2(a). B-187772 (1976). 52 Comp. Gen. 792.
52 Comp. Gen. 20. 52 Comp. Gen. 22.

Protester objected to the awards of two contracts by the Coast Guard. A protest sent by certified mail, postmarked less than 5 days prior to the final date for filing and received more than 10 working days after the date of the initial adverse agency action, was untimely. A protest filed with GAO 8 months after the initial protest was filed with the agency is untimely, since continued contract performance constitutes an adverse agency action. (Author/SC)

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*J. Clark
Proc. L*

DECISION



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

FILE: B-188668

DATE: May 11, 1977

MATTER OF: Rotair Industries

DIGEST:

1. Protest sent by certified mail and received more than 10 working days after date of initial adverse agency action (letter denying protest) is untimely and not for consideration on merits as postmark indicates letter was sent less than 5 days prior to final date for filing.
2. Protest filed with our Office 8 months after initial protest was filed with procuring activity is untimely since contracting agency's active support of continued contract performance constitutes adverse agency action. Protester is charged with notification of this adverse agency action when it has reason to know that agency has permitted contract to be substantially performed. Since contract was completed at time of protest to our Office, we would be unable to provide any meaningful relief; therefore, protest will not be considered.

By letter dated December 3, 1976, Rotair Industries, Inc. (Rotair), filed a protest with the United States Coast Guard against the award of a contract to any other bidder for various aircraft replacement parts under request for proposals (RFP) No. 6211-0176. That protest was denied by the Coast Guard by letter dated March 3, 1977, which was received by Rotair on March 7, 1977. By certified letter dated March 18, 1977, received in our Office on March 24, 1977, Rotair filed a protest against the award under the RFP.

Our Bid Protest Procedures provide in pertinent part:

"* * * 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 or actual or constructive knowledge of initial adverse agency action will be considered * * *" 4 C.F.R. § 20.2(a) (1976).

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In the instant case, Rotair's protest was not filed (received) in our Office until 13 working days after it was notified that the procuring activity had denied its protest. While § 20.2(b)(3) of our Procedures provides that an untimely filed protest may be considered where sent by certified mail if sent not later than the fifth day prior to the final date for filing, the U.S. Postal Service postmark indicates Rotair's certified letter was sent less than 5 days before that date. Consequently, this aspect of the protest is untimely and will not be considered on the merits. The Bared and Cobo Company, Inc., B-187772, November 22, 1976, 76-2 CPD 441.

Included in its March 18 letter, Rotair has also protested an award to D. Moody & Company under solicitation No. 6082-0676 also issued by the Coast Guard. By letter dated August 31, 1976, Rotair protested this award to the procuring activity.

We have held that the contracting agency's acquiescence in and active support of continued and substantial contract performance may constitute adverse agency action. See 52 Comp. Gen. 792 (1973). A protester will be charged with notification of this adverse action when it has reason to know that the agency has permitted the contract to be substantially performed or completed.

Rotair's protest to our Office 8 months after filing its initial protest with the procuring activity is not timely under these standards and procedures. Notwithstanding the fact that Rotair contacted the Coast Guard by letters dated October 11, 1976, and January 10, 1977, concerning its protest, Rotair should have protested to our Office promptly when these letters were ignored and contract performance was proceeding to a point where we would be unable to grant any meaningful relief.

In 52 Comp. Gen. 20, 22 (1972) our Office held that the purpose of section 20.2(a) is to provide a means by which "* * * protests may be expeditiously resolved at a stage in the procurement when some effective remedial action may be taken on meritorious protests." The intent of this provision also is to secure the resolution of the matter when some meaningful relief may be offered, not--as we have been advised in this case--after the contract has been completed.

Accordingly, we are closing our file without consideration of the protests.

for *Milton Asstair*
Paul G. Dembling
General Counsel