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DECISION



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

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FILE: B-193547

DATE: February 16, 1979

MATTER OF: Abilities, Inc.

DIGEST:

Protest received by GAO more than 10 working days after receipt by protester of notice of initial adverse agency action on protest filed with agency is untimely and not for consideration.

Abilities, Inc. (Abilities) protests the actions of the United States Air Force (Air Force), Ogden Air Logistics Center, Hill AFB, Utah, under requests for proposals (RFP) Nos. 42600-78-R-6302, F42600-78-R-6605 and F42600-78-R-6788, issued in connection with section 502(c) of Pub. L. 95-89. Abilities contends that Air Force administrative postponements delayed possible awards under the proposals until the 1 year period during which Abilities was eligible for award under section 502(c) had expired. Abilities asserts that such actions "subvert the intention of Congress" and implies that award should be made to it.

Section 502(c) provided that "[d]uring fiscal year 1978, public and private organizations and individuals eligible for assistance" under section 7(h) of the Small Business Act (15 U.S.C. 636(h)) could participate in procurements set aside for small business firms. Section 7(h) provides for assistance to organizations operated in the interest of handicapped individuals. Abilities is such an organization

Abilities was solicited by the Air Force in May, July and August 1978 for the three procurements involved, and Abilities submitted proposals in a timely manner, and claims to have been low offeror on two of the procurements. However, awards were not made by the end of

the fiscal year, apparently because of funding and/or other administrative problems. Consequently, the Air Force notified Abilities that its eligibility under Pub. L. 95-89 had expired and that its offers could not be accepted.

Abilities initially protested to the Air Force by communication of October 6, 1978. The Air Force response, received by Abilities on October 31, 1978, denied the protest. Abilities' protest letter to this Office was filed November 21, 1978.

The protest is untimely.

Section 20.2(a) of the Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1978), states 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 working days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered. * * *"

Since the protest was filed here more than 10 working days after Abilities received the Air Force letter on October 31, the protest is untimely filed and not for consideration on the merits.

We recognize that Abilities appears to have been unaware of our Procedures and requested information from the Air Force about the "next step in the appeal process." Under the law, however, Abilities must be regarded as having been on notice of those Procedures as they were published in the Federal Register (40 Fed. Reg. 17979) on April 24, 1975. See Washex Machinery Corporation, B-190726, March 22, 1978, 78-1 CPD 227, and decisions cited therein.

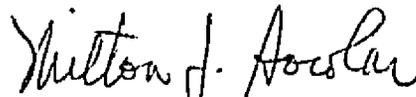
We do point out, however, that the Air Force's interpretation of Pub. L. No. 95-89 § 502(c) appears to be correct, as the language of the statute clearly

B-193547

3

provides only for awards during fiscal year 1978, and it further appears that the awards ultimately made were executed in fiscal year 1979 and are funded with fiscal year 1979 funds.

The protest is dismissed.



Milton J. Socolar
General Counsel