

PLCG

DECISION



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

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FILE: B-194514

DATE: April 24, 1979

MATTER OF R. B. S., Inc.

DLG 00086

DIGEST:

[Protest of Defense Logistics Agency's Cancellation of IFB]

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 post-mark indicates letter was sent less than 5 days prior to final date for filing.

R. B. S., Inc. (R. B. S.), has protested the Defense Logistics Agency's (DLA) cancellation of invitation for bids (IFB) No. DLA 600-79-B-0051 for the provision of coal for Sawyer Air Force Base, Michigan, following that agency's decision to cancel Item 4 of the subject solicitation and resolicit under IFB No. DLA 600-79-B-0116. R. B. S. contends the cancellation and resolicitation were not required under Defense Acquisition Regulation (DAR) § 2-407.9 (1976 ed.). Further, R. B. S. asserts that the resolicitation "provided an advantage in pricing strategy to prospective new bidders," biasing R. B. S.'s competitive standing.

By letter dated February 28, 1979, R. B. S. protested the matter to DLA. That protest was denied by the agency by letter dated March 15, 1979, which was received by R. B. S. on March 19, 1979. By certified letter dated March 29, 1979, received in our Office on April 3, 1979, R. B. S. filed a protest against the cancellation and resolicitation of item 4 of the IFB.

Our Bid Protest Procedures provide in pertinent part:

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

In the instant case, R. B. S.'s protest was not filed (received) in our Office until April 3, 1979, more than 10 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, ^{but} the United States ~~Postal Service~~ postmark indicates R. B. S.'s certified letter was sent less than 5 days before that date. Consequently, the untimely filed protest ~~may not be~~ considered ^{on} the merits. See Rotair Industries, B-188668, May 11, 1977, 77-1 CPD 338.

The protest is dismissed.



Milton J. Socolar
General Counsel