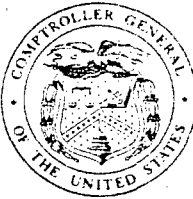


11-669

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## DECISION



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

FILE: B-195109

DATE: October 15, 1979

MATTER OF: Crestwood Furniture Company

*[Timeliness of Refiled Protest]*

DIGEST:

Protester filed timely protest, which was subsequently withdrawn. Record contains no evidence that protester withdrew because procuring activity misled protester or offered to take corrective action acceptable to protester. In these circumstances, subsequently refiled protest should be considered as initial protest and must independently satisfy timeliness requirements. Since protest was refiled more than 10 days after bases of protest were known, it is untimely under Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1979), and not for consideration on merits.

Crestwood Furniture Company (Crestwood) protests the award of a contract by the General Services Administration (GSA) to Vision, Inc., AAA Upholstery Manufacturing, Inc., Broad Top Industries, Inc. (joint venture). For reasons stated below, Crestwood's protest is untimely and not for consideration on the merits.

A chronology of events surrounding Crestwood's protest follows:

1. March 7, 1979--GSA issued solicitation FEFP-S4-0131-A for the procurement of executive, wooden chairs.
2. March 28, 1979--four bids were opened.
3. May 25, 1979--GSA made awards to Crestwood for items 1, 3, 5, and 9-16 and to the joint venture for items 2, 4, 6, 7, and 8.

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4. By letter of June 6, 1979, Crestwood simultaneously protested to the agency and our Office the award of items 2, 4, and 6 to the joint venture because the agency allegedly ignored an "all-or-none" statement with respect to those items in the Crestwood bid which, if applied, would have made the protester low. The protest further stated, as follows:

"Our original feeling was that this decision may have been based on an improper acceptance of a condition in the AAA-Vision-Broad-Top bid. A copy of a memorandum we have prepared on this issue is attached."

The memorandum reads, in part:

"Our total net price on these three items (2, 4 and 6) was \$135,706.88, approximately \$200.00 lower than the Vision-AAA offer.

"The bid from Vision-AAA included a provision we believe read as follows: 'If we are not low on item 8, and we are low in item 3, reduce price item 8 by \$4.00.'

"Vision-AAA was the low bidder on this item without the reduction. Nevertheless, GSA apparently decided that by accepting the condition they could reduce their cost by \$380.00, wipe out our \$200.00 margin and save the government a net of something under \$200.00."

5. By letter of June 7, 1979, Crestwood supplemented its protests concerning the award of items 2, 4, and 6 to the joint venture.

6. By letter of June 27, 1979, Crestwood withdrew the protests "without prejudice" following a meeting with the contracting officer "to explain the interpretation placed on the [joint venture's] bid."

7. By letter of July 13, 1979, Crestwood protested award under any items due to the above-quoted provision in the joint venture's bid. The protest was filed (actually received by GAO) on July 17, 1979.

Crestwood knew its bases of protest in early June 1979 and filed a timely protest with our Office. The protest was subsequently withdrawn. There is no evidence of record that Crestwood withdrew the protest because it was misled by GSA or because GSA offered to take corrective action acceptable to the firm. Crestwood then refiled the protest.

In our view, a protest which is refiled after withdrawal, absent evidence of the nature mentioned above, should be treated as an initial protest and must independently satisfy the timeliness requirements of our Bid Protest Procedures, 4 C.F.R. part 20 (1979). Our Bid Protest Procedures require that a protest be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2) (1979). Therefore, Crestwood's refiled protest on July 17, 1979, or more than 10 days after the bases of protest were known (early June 1979), is untimely and not for consideration on the merits.

Based on the foregoing, the protest is dismissed.

*Harry R. Jan Claus*  
for Milton J. Socolar  
General Counsel