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DECISION



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

[Protest Alleging Awardee Is Not Qualified]

FILE: B-201423

DATE: JAN 6 1981

MATTER OF: Mountain Valley Nursery, Inc.

DIGEST:

Where initial protest to contracting agency is not timely filed, subsequent protest to General Accounting Office is dismissed as untimely.

Mountain Valley Nursery, Inc. (MVN), protests the award made under solicitation No. BIA-MOO-80-34, issued by the Bureau of Indian Affairs (BIA), to grow, transport and plant containerized Ponderosa pine tree seedlings, at the Mescalero Apache Indian Reservation, Mescalero, New Mexico. MVN alleges that the planting experience questionnaire submitted by the awardee, Colo-Hydro, Inc., indicates it is not qualified to plant.

We believe this protest is untimely and, therefore, it will not be considered on the merits.

On September 30, 1980, MVN sent a letter to BIA asking to whom the contract had been awarded and, in the event MVN had not been awarded the contract, requesting it be furnished the tree growing and planting experience questionnaires relating to the bids of the competing bidders. In a letter dated October 15, 1980, BIA stated that the contract was "awarded to Colo-Hydro, Inc." (Colo-Hydro), and enclosed copies of the requested questionnaires. In response, MVN took exception to the award to Colo-Hydro in a letter to BIA dated November 7, 1980. MVN requested that the award to Colo-Hydro be retracted by BIA.

Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest is filed initially with a contracting agency, a subsequent protest to GAO filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be

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considered, provided the initial protest was timely filed. 4 C.F.R. § 20.2(a) (1980). Whether MVN's protest to GAO is timely depends on whether its protest to BIA was timely.

To be timely, MVN must have filed its protest with BIA within 10 working days after it knew or should have known the basis for protest. 4 C.F.R. § 20.2(a) and § 20.2(b)(2) (1980). The filing requirement is satisfied only upon actual receipt by the agency. 4 C.F.R. § 20.2(b)(3) (1980).

BIA informed MVN that Colo-Hydro had been awarded the contract in its letter dated October 15, 1980. It was not until 17 working days later, by letter dated November 7, 1980, that MVN undertook to protest the award to Colo-Hydro to BIA. The letters submitted by the protester indicate dates but do not show dates of receipt. However, since both letters were mailed and received within the same State and since the time it would take BIA's letter to reach the protester in the normal course of events should approximate the mailing time from the protester to the agency, we consider it reasonable to assume the 17 working days between the dates of the letters to constitute the period between actual knowledge of the initial adverse agency action, i.e., award to another bidder, and filing of the initial protest to the agency. Thus, since the MVN protest to BIA was not filed within 10 working days after MVN was advised it had not received the award and received the experience questionnaires, we find the subsequent protest to this Office is untimely and not for consideration on the merits. Advanced Marine Enterprise, Inc., B-196252.2, February 7, 1980, 80-1 CPD 106; Central Air Service, B-194979, June 27, 1979, 79-1 CPD 462.

The protest is dismissed.



Milton J. Socolar
General Counsel