

18674⁵

DECISION



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

FILE: B-202678

DATE: June 29, 1981

MATTER OF: FML Analytical Division

DIGEST:

Protest to GAO filed more than 10 working days after protester's receipt of contracting agency's denial of protest at that level is untimely and will not be considered on merits.

FML Analytical Division protests the award of a contract on December 10, 1980, to Anaclin for drug screening services under Bureau of Prisons (BOP) solicitation 123-120. FML contends that the evaluation of its proposal in response to the solicitation was unreasonable.

We will not consider the merits of the protest because it was not timely filed in accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1980).

FML was advised of the award to Anaclin by letter of December 18, 1980, received by the firm on December 24. FML then filed a protest with BOP against the award on January 6, 1981. The protest was denied by letter of March 5, which the record shows was received by FML by March 12.

Section 20.2(a) of our Procedures requires that where a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office must be filed within 10 working days after the firm receives notice of the contracting agency's initial adverse action on the protest at that level.

FML's protest to our Office was filed on March 30, which is 12 working days after the firm's receipt of BOP's denial of the protest to that agency. Accordingly, the protest is untimely under section 20.2(a) of our Procedures.

[Protest Alleging That Proposal Evaluation Was Unreasonable]

~~014450~~ **115683**

We note here that BOP's March 5 letter denying FML's protest incorrectly advised the firm that if it wished to appeal to the General Accounting Office it need only so notify the contracting officer within 10 days of receipt of the letter, and he would instruct FML on the necessary procedures. That advice was repeated by the contracting officer in a March 12 telephone call initiated by FML.

However, the record also includes a letter of March 19 from BOP to FML enclosing a copy of our Bid Protest Procedures for the firm's information, which appears to have been received by FML by March 23, three days before the 10 working day period set out in section 20.2(a) expired. Thus, notwithstanding the incorrect advice in BOP's March 5 letter to FML, the firm still had the opportunity to file a timely protest after it received the copy of our Procedures. In any case, since our Bid Protest Procedures were published in the Federal Register, firms are considered to be on constructive notice of their contents, including the time limits for filing protests. Coventry Manufacturing Company, Inc., B-201626, January 22, 1981, 81-1 CPD 41; Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29.

We also recognize that even though BOP denied FML's protest by letter of March 5, the firm continued to pursue the matter with that agency before protesting to our Office. However, while a protester may consider an agency's initial adverse action to be wrong or inadequately explained, leading the protester to seek reconsideration or clarification within that agency, our Procedures are clear that any subsequent protest to the General Accounting Office must be filed within 10 working days after notice of initial adverse agency action. See Mr. Scrub Car Wash Systems, Inc., supra.

In fact, the record shows that the contracting officer told FML at least twice before the protest to our Office was filed that the March 5 letter was a final decision, and that any appeal should be directed to the General Accounting Office.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel