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DECISION



Request

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

21528

FILE: B-206811

DATE: April 20, 1982

MATTER OF: Overhead Electric Company

DIGEST:

1. Protest filed with GAO more than 10 working days after protester learns of the initial adverse agency action on protest filed with agency is dismissed as untimely under 4 C.F.R. § 21.2(a) (1981).
2. Protest concerning the small business size status of a bidder is not for consideration by the GAO since by law it is a matter for decision by the SBA.

Overhead Electric Company (Overhead) protests the rejection of its bid as nonresponsive and challenges the small business status of Line Power, Inc. (Line Power), the second low bidder, under invitation for bids (IFB) F26600-81-B0113, issued by the Department of the Air Force.

By letter dated January 29, 1982, Overhead protested to the procuring activity. The contracting officer responded to the two bases of protest by letter dated February 4, 1982. In that letter, the contracting officer advised Overhead that its bid was nonresponsive because it exceeded the statutory cost limitation for bid item 0002. This letter amounts to a denial of Overhead's protest concerning the responsiveness of its bid. With respect to the small business status of Line Power, the contracting officer requested Overhead to furnish additional details within 10 workdays.

Regarding the issue of Line Power's size status, we point out that this is a matter for resolution by the Small Business Administration (SBA) and not by our Office. Under 15 U.S.C. § 637(b)(6) (1976), the SBA is empowered to conclusively determine matters of small business size status for Federal procurement and sales purposes.

Section 21.2(a) of our Bid Protest Procedures (4 C.F.R. part 21 (1981)) requires that if a protest has been initially filed with the contracting agency, any subsequent protest to our Office must be received in our Office within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. We have held that a protester's continued pursuit of its protest with the contracting agency, despite the initial rejection of its protest, does not extend the time or obviate the necessity for filing a protest with our Office within 10 working days of initial adverse agency action. See, e.g., BKC Incorporated, et al., B-198905, June 10, 1981, 81-1 CPD 474. Therefore, a February 11, 1982, letter from the protester's counsel to the contracting agency continuing to contest the nonresponsiveness determination did not extend the time for filing a protest with our Office.

Accordingly, since Overhead's protest to our Office was not filed (i.e., received) until March 18, 1982, more than 10 working days after it received the agency's February 4, 1982, denial of its protest, Overhead's protest is untimely and will not be considered on the merits.

The protest is dismissed.

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