

DECISION



21765 118330
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-207279

DATE: May 10, 1982

MATTER OF: Robert F. Robocker

DIGEST:

Protest filed with GAO more than 10 working days after offeror learned that its protest to the contracting agency was denied is untimely and not for consideration on the merits.

Dr. Robert E. Robocker protests the award of any contract under solicitation No. GS-09B-09212, issued by the General Services Administration (GSA) for leased space in Auburn, California, to be occupied by certain Government agencies. GSA refused to consider Dr. Robocker's offer because it was not submitted until February 17, 1982, one day after the closing date for receipt of initial proposals. Dr. Robocker principally contends that GSA's refusal to consider his proposal was improper because the solicitation had been amended on February 8 to require less floor space and the February 16 closing date left him inadequate time to adjust his proposal. He further maintains that GSA should have conducted this procurement on an advertised rather than a negotiated basis. We dismiss the protest as untimely.

Dr. Robocker initially protested this matter to GSA by letter dated February 25. GSA denied the protest by letter of March 26 which, according to the record, was received by Dr. Robocker on March 30. Dr. Robocker requested reconsideration of this decision on March 30. GSA denied this request by letter dated April 13. Dr. Robocker then filed a protest with our Office on April 26.

We have some question as to whether Dr. Robocker's initial protest to the agency was timely filed. We need not decide that issue, however, because it is clear his subsequent protest to our Office was untimely.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(a), state that if a protest is initially filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after notification of the initial adverse agency action on the protest. Dr. Robocker learned of the denial of his February 25 protest--the initial adverse action by GSA--on March 30, more than 10 days prior to filing his protest in our Office on April 20. This protest is therefore untimely and not for consideration on the merits. Irwin Industries, Inc., B-204786, October 5, 1981, 81-2 CPD 277.

The fact that Dr. Robocker requested reconsideration of GSA's March 30 denial and then protested to our Office within 10 days after learning that his reconsideration request had been denied does not affect our conclusion. While we recognize that a protester may consider an agency's initial adverse action to be ill-founded or inadequately explained, and thus may consider it necessary to correspond further with the agency, it nonetheless must file any protest to our Office within 10 days of being notified of the initial adverse agency action. Rowe Industries, B-185520, January 8, 1976, 76-1 CPD 13; 52 Comp. Gen. 20 (1972).

The protest is dismissed.

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