

# DECISION



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

FILE: B-210352

DATE: January 24, 1983

MATTER OF: Emergency Boarding, Inc.

## DIGEST:

When protest is initially filed with contracting agency, subsequent protest filed with GAO more than 10 working days after initial adverse agency action, denial of protest, is untimely and will not be considered on the merits.

Emergency Boarding, Inc. (EBI), protests the United States Department of Housing and Urban Development's (HUD) rejection of its bids as nonresponsive to invitation for bids Nos. 256-82-012, 260-82-012, and 261-82-012. EBI contends that HUD's rejection of the bids because it submitted terms of "30 days net" was arbitrary.

In addition to its letter of protest dated December 27, 1982, EBI included a letter from HUD dated September 13, 1982. The letter is a denial of the protest EBI filed with the agency. HUD rejected the bids on the basis that the bidder imposed conditions which would modify requirements of the IFB or limit its liability to the Government so as to give it an advantage over the other bidders. It also pointed out that EBI was not the low bidder under one of the IFB's.

Since EBI was not the low bidder under the one IFB, whether its bid was improperly rejected is academic since EBI would not be entitled to award in any event.

With regard to the other IFB's, the protest is untimely. Section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. part 21 (1982), requires that when a protest is initially filed with the contracting agency, a subsequent protest to our Office must be filed within 10 working days of knowledge of the initial adverse agency action. Edron, Inc., B-207353, June 9, 1982, 82-1 CPD 557. EBI's receipt of HUD's September 13 letter denying its protest constituted knowledge of adverse agency action. Therefore, even though EBI does not state when it received the letter, it is reasonable to assume the protest received in our Office 3 months later is untimely.

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Accordingly, the protest is dismissed.

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