

DECISION

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

FILE: B-210737

DATE: July 5, 1983

MATTER OF: Priest & Fine, Inc.

DIGEST:

Appeal of protest initially filed with procuring agency must be filed with GAO within 10 working days after procuring agency's initial adverse action. The procuring agency responded to protest by reaffirming its position at a debriefing and awarding the contract. Appeal filed with GAO more than a month and a half after this adverse action is, therefore, untimely.

Priest & Fine, Inc. (P&F), protests the award of a contract by the National Science Foundation (NSF) to Speser Associates (Speser) under request for proposals (RFP) No. 82-122, a total small business set-aside. The contract is for the organization and presentation of two conferences designed to make small businesses aware of the availability of various opportunities to compete for Federal contracts and grants in high technology research and development. P&F contends that it should have been included in the competitive range because it could perform the contract at a lower price than Speser.

The protest is dismissed.

Proposals were to be evaluated on the basis of technical and cost criteria. The 20 proposals which were submitted were evaluated on the basis of the technical criteria. Five proposals, including P&F, were judged to be superior to the others. Fourteen were regarded as being of lower quality. One was deemed "nonresponsive."

The five superior proposals were reevaluated. Speser and Lakeshore Group, Ltd., (Lakeshore), had the highest technical scores. However, P&F tied for second once its cost score was added to its technical score. Speser and Lakeshore were the only firms selected for the competitive range.

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P&F orally protested the award of a contract on December 14, 1982, and filed a written protest with NSF on December 21. NSF conducted a debriefing on December 22, at which P&F was advised of the basis upon which it was not included in the competitive range. NSF called P&F the next day and contends P&F indicated it would withdraw its protest. NSF awarded the contract to Speser. P&F protested the agency's actions to our Office in a letter received by us on February 7, 1983.

Under our Bid Protest Procedures, protests filed initially with the contracting agency must be filed in our Office within 10 working days of actual or constructive knowledge of initial adverse action. 4 C.F.R. § 21.2(a) (1983). NSF responded to P&F's protest with a December 22 debriefing and an award of the contract to Speser. The award of the contract and NSF's reaffirmation of its position at the December 22 debriefing constituted the agency's initial adverse action against P&F's protest. P&F therefore was required to file an appeal with our Office within 10 working days. See Jenson Corporation, B-206692, March 22, 1982, 82-1 CPD 271. P&F did not do so. It instead waited until February 7, 1983, a month and a half later, to file its appeal. The protest therefore is untimely and will not be considered by our Office.

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