

DECISION



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

Handwritten notes: "CUD 2/11", "R-11", and "3079".

FILE: B-218456

DATE: April 12, 1985

MATTER OF: J&S Mechanical Contractors, Inc.

DIGEST:

Letter to the contracting agency which did not use word "protest" but conveyed protester's dissatisfaction with the agency's proposed rejection of its bid and requested corrective action constituted a protest to the agency. Therefore, protest submitted to GAO more than 10 days after the protester's receipt of agency response indicating reason for bid rejection is an untimely protest under GAO's Bid Protest Regulations.

J&S Mechanical Contractors, Inc. protests the rejection of its bid for failure to acknowledge an amendment to invitation for bids (IFB) No. DACA05-85-B-0048 issued by the U.S. Army, Corps of Engineers.

We dismiss the protest as untimely.

Soon after the February 21, 1985 bid opening, J&S learned that the Corps intended to reject its bid as nonresponsive. Consequently, by letter dated February 22, J&S advised the Corps that it had not received the amendment in question and contended that award should be made to it as the low bidder. The Corps responded by letter of February 28, informing J&S that the procurement regulations required the rejection of its bid as nonresponsive. J&S, now represented by counsel, continued to pursue the matter by letter of March 14 to the Corps, setting forth detailed argument in support of its position and concluding that unless the Corps made award to J&S or canceled the IFB it would either protest to our Office or seek injunctive relief in court. On March 21 the Corps responded, informing J&S that it had rejected

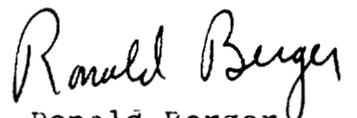
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that firm's bid and had made award to another firm. Subsequently, J&S filed its protest here on April 5.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(a)(3) (1985), provide that matters protested initially to the contracting agency must be protested to our Office within 10 days of the protester's actual or constructive notification of the agency's initial adverse action on the protest. While J&S' February 22 letter did not use the word "protest", it clearly contained an expression of dissatisfaction (J&S objected to the rejection of its bid) and a request for corrective action (J&S stated that it should receive the award). These are the elements of a protest. Small Business Systems, Inc., B-213009, July 26, 1984, 84-2 CPD ¶ 114. Moreover, J&S itself describes the letter as a protest. We thus conclude that J&S' letter of February 22 was a protest to the agency. Therefore, J&S was required to protest here within 10 days of its receipt of the Corps' February 28 letter. The fact that J&S continued to pursue the matter with the Corps after receiving the letter does not stay this 10-day requirement. McGraw-Edison Co., B-214683, Feb. 14, 1984, 84-2 CPD ¶ 198. Since the protest was not filed here within the required 10 days, it is untimely.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel