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**DECISION**



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

**FILE:** B-217037

**DATE:** June 7, 1985

**MATTER OF:** Monaco Enterprises Inc.

**DIGEST:**

1. Protest not made to GAO within 10 working days of initial adverse agency action on protest filed with agency is untimely. An agency's continued receipt of proposals after a protest has been filed without taking the requested corrective action is initial adverse agency action.
2. An allegation of a conflict of interest is denied where engineer, alleged employee of awardee, serves on national committee comprised of 18 individuals which formulated standards used in specifications, since it is unlikely engineer would have exerted enough influence to favor awardee.

Monaco Enterprises Inc. (Monaco) protests the award of a contract by the Department of the Navy to King-Fisher Company (King-Fisher) for fire alarm systems. Monaco charges that the specifications were defective, that the Navy unreasonably required that the equipment used be Underwriter Laboratory (U.L.) listed, and that an employee of King-Fisher was instrumental in formulating the specifications. The protester says these irregularities combine to unduly restrict competition.

The Navy contends that the specifications were consistent with guidelines established by the National Fire Protection Association (NFPA) for fire alarm systems. The Navy also argues that contentions raised by the protester after September 17, 1984, the date set for receipt of initial proposals, are untimely.

We dismiss the protest in part and deny the remainder.

On September 14, 1984, Monaco filed a protest with the Navy expressing its dissatisfaction with the specifications contained in the request for proposals (RFP). Although it did not contact Monaco or specifically respond to the protest until October 23, the Navy received proposals as

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scheduled until the September 17 closing date. Monaco did not file a protest with us until November 5, when it continued its protest against the specifications and raised additional protest bases.

Monaco's arguments concerning defects in the specifications must be dismissed as untimely. Our Regulations require that where a protest is initially filed with a contracting agency, a subsequent protest to this Office must be filed within 10 working days after the protester has actual or constructive notice of the initial adverse agency action on the protest. 4 C.F.R. § 21.2(a) (1985). An agency's continuing with the receipt of proposals as scheduled without taking the requested corrective action is such adverse agency action. 4 C.F.R. § 21.0(e). The fact that the agency does not formally deny the protest until a later date does not alter the fact that initial adverse action has previously occurred and that a protester has 10 days from the date of that action to protest with us. Central Air Service, B-213205, Feb. 5, 1984, 84-1 C.P.D. ¶ 147. Here, since the protest to our Office was not filed within 10 days after the closing date for receipt of proposals, it is untimely.

Monaco's protest that the Navy unreasonably required U.L. listed equipment is also untimely. Monaco did not raise this issue in its initial protest to the agency. Although protesters may bring additional protest bases in subsequent filings, they must independently satisfy our timeliness requirements. An alleged solicitation defect must be protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Since the RFP, as issued, contained the U.L. requirement, Monaco knew of the requirement upon receipt of the RFP and had to raise this matter prior to the proposal due date.

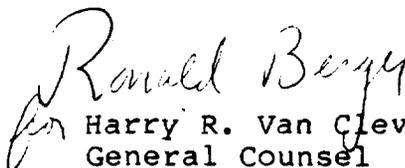
Monaco's third contention is that a conflict of interest existed because the engineer who helped design the specifications is also an employee or agent of the awardee. This protest basis arose when the contract was awarded, notice of which Monaco received on October 23; Monaco filed its protest with us within 10 working days thereafter. Therefore, this issue is timely. See 4 C.F.R. § 21.2(a)(2).

The record indicates that Mr. Schulman, although an independent engineer, had prior business dealings with King-Fisher. Specifically, he had worked as a consultant on a project for King-Fisher, and had apparently represented the company by paying for a hotel room registered under its name.

Mr. Schulman is also the chairman of the NFPA Technical Committee which establishes standards for fire protection equipment. Since the specifications under protest are almost identical to these standards, Monaco alleges that Mr. Schulman was influential in their formulation. The crux of Monaco's contention, therefore, is that an employee of King-Fisher designed the specifications in a manner to assure compatibility with the King-Fisher equipment.

We find that Monaco has not carried its burden of proof on this issue. While Mr. Schulman is the chairman of the committee that promulgates guidelines for equipment, the committee is comprised of 18 members, including representatives from businesses, fire departments, and the federal government. It is unlikely that Mr. Schulman would have enough influence to design guidelines that favor King-Fisher. Further, Mr. Schulman had no role in formulating the solicitation or the review and evaluation of proposals. The Navy was responsible for the selection of the awardee. Regardless of Mr. Schulman's relationship with King-Fisher, we find any potential conflict of interest to be too remote to object to the award.

The protest is denied.

  
for Harry R. Van Cleve  
General Counsel