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DECISION



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

FILE: B-219605

DATE: August 9, 1985

MATTER OF: I.M., Inc.

DIGEST:

Protest filed more than 10 working days after protester learned of initial adverse agency action (award to another firm) on protest to agency is untimely. Protester's continued pursuit of protest with contracting agency does not alter this result.

I.M., Inc. (IM), protests the rejection of its bid and the award to another, higher bidder under invitation for bids No. DLA120-85-B-0917, issued by the Defense Logistics Agency (DLA) for gauze bandages. We dismiss the protest as untimely.

The Department of Defense Appropriation Act of 1985, Pub. L. No. 98-473, 98 Stat. 1904, 1926, generally provides that no part of any appropriation contained in the Act shall be used for the procurement of any article of cotton not grown, reprocessed, reused or produced in the United States. As our Office has recently indicated, the statutory restriction prohibits the procurement of an article unless the article's raw fibers and each successive stage of manufacture are domestic. Penthouse Manufacturing Co., Inc., B-217480, Apr. 30, 1985, 85-1 C.P.D. ¶ 487.

Although the solicitation apparently included a domestic preference restriction implementing the above statutory restriction, IM informed DLA that the cotton to be used in the bandages, while grown in the United States, would be woven, bleached and rolled in Israel prior to return to the United States for further processing.

This apparently proved unsatisfactory to DLA, since, by letter of June 19, IM informed the agency that:

"We strongly disagree with your refusal to grant us the contract"

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"All the cotton used in our product is of United States origin as we had advised, therefore there is no basis for your statement that our offer was not responsive."

Subsequently, by letter of June 21, IM indicated to the agency that "[w]e strongly protest the awarding of this contract."

Nevertheless, on June 27 DLA rejected IM's bid and made award to another bidder. By letter of July 1, DLA informed IM that its bid was rejected for failure to comply with provisions in the IFB requiring that all articles of cotton be produced in the United States and that all manufacturing be accomplished in the United States.

In response, by letters of July 3 and July 11, IM protested to DLA that the rejection of its bid for failure to comply with the domestic preference restriction was improper because IM was willing to process the cotton in the United States and because the United States, by treaty and memorandum of understanding, had agreed to treat raw material processed in Israel as if it had been processed in the United States. Subsequently, on July 22, IM filed this protest with our Office, alleging that rejection of its bid was improper for the reasons set forth in its letters of July 3 and July 11 to DLA.

Under our Bid Protest Regulations, protests must be filed within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). Where the protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Adverse agency action is any action or inaction which is prejudicial to the position taken in a protest filed with an agency. Notice of award, the possibility of which has been protested to a contracting agency, constitutes initial adverse agency action. Weitzul Construction, Inc., B-216036, Feb. 12, 1985, 85-1 C.P.D. ¶ 184.

As indicated above, in its letters of June 19 and June 21, IM protested any award to another bidder. By July 3, however, IM knew that DLA had nevertheless rejected the firm's bid and made award to another bidder.

Since IM then failed to file this protest until July 22, more than 10 working days after learning of the initial adverse agency action (award to another bidder) on its June protest to DLA, we consider the protest to our Office to be untimely. The fact that IM continued to pursue its protest with DLA does not alter this result. See Pierce Coal Sales, International--Request for Reconsideration, B-218003.2, Feb. 25, 1985, 85-1 C.P.D. ¶ 236.

The protest is dismissed.



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General Counsel