

DECISION

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

FILE:

B-220054.2

DATE: October 2, 1985**MATTER OF:**

Delta Petroleum Company, Inc.

DIGEST:

A protest that is refiled after GAO dismissed an earlier protest based on the same grounds because the protester failed to provide the contracting agency with a copy within 1 day after the protest was filed with GAO must independently satisfy the timeliness requirements of the GAO Bid Protest Regulations.

Delta Petroleum Company, Inc. protests the failure of the Defense Logistics Agency to award it a contract for all line items for packaged oil products set aside for small business firms under invitation for bids (IFB) No. DLA400-85-B-0100. This protest was received by our Office on September 23, 1985.

We dismiss the protest because it is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985), require that protests be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier.

On September 10, we received a protest from Delta based on the same grounds and pertaining to the same procurement as this one does. That protest was dismissed because Delta failed to provide a copy of the protest to the contracting agency within 1 day after the protest was filed with our Office as required by section 21.1(d) of our Bid Protest Regulations. The requirement to furnish a copy of the protest to the agency within the 1-day period was necessitated by the strict time limits imposed by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551-3556 (West Supp. 1985). Any delay in providing a copy of the protest to the contracting agency necessarily delays the protest proceedings and frustrates our efforts to provide effective consideration of all objections to

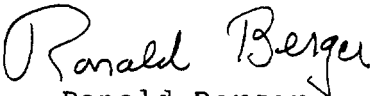
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agency procurement actions within the statutory time limitations imposed by CICA. Storage Technology Corp., B-218148.2, Mar. 11, 1985, 64 Comp. Gen. ___, 85-1 CPD ¶ 300.

Since the initial protest was dismissed, the refiled protest must be treated as the initial protest and must independently satisfy the timeliness requirements of our Bid Protest Regulations. See Security Assistance Forces and Equipment International, Inc., B-193695, June 9, 1980, 80-1 CPD ¶ 398; Crestwood Furniture Co., B-195109, Oct. 15, 1979, 79-2 CPD ¶ 255, aff'd on reconsideration, B-195109.3, Jan. 21, 1980, 80-1 CPD ¶ 59. We have been informed by the agency that Delta was notified by letter of August 15 that it had been awarded a contract for 17 of the 40 line items set aside for small business firms and that on August 28 Delta representatives attended a meeting with the contracting officer during which the reasons why Delta was not awarded the 23 other line items were discussed.

Therefore, it is clear that by August 28, Delta was aware of the grounds for its protest and should have protested within 10 working days of that date (September 12). Koenig Mechanical Contractors, Inc., B-217571, Apr. 4, 1985, 85-1 CPD ¶ 389. Instead, it was not until September 23 that we received the refiled protest from Delta. This protest is untimely.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel