

**DECISION**



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

**FILE:**

B-222804

**DATE:** April 17, 1986

**MATTER OF:**

Charles A. Martin & Associates

**DIGEST:**

Where an initial protest is untimely filed with the contracting agency under GAO Bid Protest Regulations, subsequent protest to GAO is untimely and will not be considered even though it was filed within 10 working days of the agency denial of the protester's initial protest.

Charles A. Martin & Associates (Martin) protests the award of contract No. F04626-85-D0016 to YEI Engineers, Inc. (YEI), by Travis Air Force Base, California, for architect-engineer (A-E) services.

We dismiss the protest.

By letter dated September 10, 1985, Martin protested to the Air Force against the September 4, 1985, award to YEI. Martin's protest to the Air Force stated that the October 29, 1984, advertisement in the Commerce Business Daily (CBD) for the A-E services contained a statement that qualified minority owned and controlled A-E firms will receive a preference in the selection process. Martin's protest alleged that this preference for minority owned and controlled firms violated the Constitution, the Armed Services Procurement Act, the Brooks Act, and the Federal Acquisition Regulation. By letter of March 27, 1986, the Air Force denied Martin's protest. Martin's subsequent protest to GAO was filed on April 11, 1986.


Our Bid Protest Regulations state that, where the initial protest has been filed with the contracting agency, a protest to our Office, even if filed within 10 working days after notification of initial adverse agency action, will be considered only if the initial protest to the agency was timely filed in accordance with our Regulations.

4 C.F.R. § 21.2(a)(3) (1985); Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, Feb. 20, 1986 86-1 C.P.D. ¶ 182.

035192

Martin's initial protest against the preference for minority controlled or owned A-E firms as stated in the CBD announcement was not timely filed with the Air Force. Our regulations require that protests based upon alleged improprieties in a solicitation be filed before responses to the solicitation are due. 4 C.F.R. § 21.2(a)(1) (1985); TEAM Corp., B-218584, June 27, 1985, 85-1 C.P.D. ¶ 734.

Because the protested preference was apparent from the CBD announcement, Martin was required to protest any objection it had to the preference prior to the date specified in the CBD announcement for the receipt of qualification statements of the A-E firms. R. E. Skinner & Associates, B-196084, et al., Feb. 20, 1980, 80-1 C.P.D. ¶ 145. Therefore, Martin's initial protest against the preference given to minority enterprises filed after award was untimely. R. E. Skinner & Associates, B-196084, et al., supra. Thus, the protest subsequently filed with our Office is also untimely and will not be considered. 4 C.F.R. § 21.2(a)(3) (1985); Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, supra; Dakota Woodworks, 64 Comp. Gen. 317 (1985), 85-1 C.P.D. ¶ 248. Our Bid Protest Regulations may not be waived by the actions of a procuring agency such as considering an untimely protest. Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, supra; Dakota Woodworks, 64 Comp. Gen. 317, supra.

  
Robert M. Strong  
Deputy Associate  
General Counsel