



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Art Specialty Company, Inc.--Reconsideration

File: B-224130.2

Date: September 15, 1986

DIGEST

Protest to the General Accounting Office following an initial protest to the contracting agency alleging that the agency denied the protester/incumbent contractor an opportunity to compete by failing to provide it with a copy of the solicitation is untimely and will not be considered when it is not filed within 10 working days of formal notification of the agency's denial of the initial protest, notwithstanding that the protester continued to pursue the matter with the agency following the initial denial.

DECISION

Art Specialty Company, Inc. (ASC) requests that we reconsider our dismissal of its protest as untimely. The protest alleged that the General Services Administration (GSA) improperly deprived the firm of the opportunity to bid because it was not provided a copy of solicitation No. 7PRT-52773-B5/7SB.

We affirm the dismissal.

The requirement was synopsisized in the Commerce Business Daily on March 14, 1986. The synopsis specified an approximate bid opening date of "o/a [on or about]" May 12, 1986. The record indicates that bid opening occurred on May 16, and the protester was advised of this fact on June 2, 1986. The record further indicates that ASC protested to GSA by letter dated June 4, arguing that as the incumbent for many years it should have been provided a copy of the solicitation. GSA denied this agency-level protest on June 27, when GSA advised ASC that the firm had not been deliberately excluded, and that adequate competition and reasonable prices had been obtained. ASC filed the protest to our Office on August 27, 1986.

If a protest is filed with the contracting agency, our Bid Protest Regulations require that any subsequent protest to this Office be filed within 10 working days of notice of

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the agency's initial adverse action. 4 C.F.R. § 21.2(a)(3) (1986). Further, the initial agency protest must be filed within 10 working days after the basis for protest is or should have been known, whichever is earlier. Id.

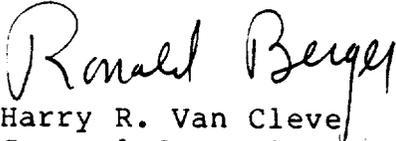
It is not clear from the record when ASC first should have known the basis for its protest--the agency's failure to solicit the firm in time for it to submit a bid under the solicitation. This is because the published synopsis only specified the approximate date on which bid opening would be held, and ASC arguably had a right to expect to be solicited for the follow-on contract because the firm was the incumbent. See generally Dan's Moving & Storage, Inc., B-222431, May 28, 1986, 86-1 CPD ¶ 496. Assuming, therefore, that the June 4, 1986 protest to GSA was timely, ASC's subsequent protest to us nonetheless was untimely because it was not filed within 10 working days of ASC's receipt of GSA's June 27 denial of ASC's initial protest.

ASC, in support of its position that it complied with the timeliness requirements of our regulation, states that it corresponded extensively with GSA from June 4 to August 26, 1986, including five letters that the firm wrote to the contracting officer between July 2 and August 26, following the denial of its agency protest.

This exchange of correspondence does not make ASC's protest timely. Section 21.2(a)(3) of our Regulations makes it clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. The purpose of that rule, like the purpose of our other timeliness rules, is to insure that protests are filed at a point in the procurement when corrective action, if warranted, is most practicable. See Comdisco, Inc.--Reconsideration, B-214409.3, Dec. 3, 1984, 84-2 CPD ¶ 596. The fact that a firm continues to pursue a denied protest with the contracting agency, as ASC did here, does not warrant our consideration of a subsequently filed protest that does not comply with section 21.2(a)(3). See Bobnreen Consultants, Inc., B-218214.3, May 31, 1985, 85-1 CPD ¶ 636.

Since ASC's protest to our Office was not filed within the time limits prescribed by our Regulations, it was untimely.

The dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel