



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gudenau and Company, Inc.
File: B-226081
Date: February 2, 1987

DIGEST

Protest addressed in manner other than that set forth in General Accounting Office (GAO) Bid Protest Regulations is dismissed as untimely where, because of the failure to address the protest properly, it was not received at the GAO Washington, D.C. Office within 10 days after protester learned the basis of its protest.

DECISION

Gudenau and Company, Inc. (Gudenau), protests that the United States Coast Guard negotiated with the firm in bad faith under solicitation No. DTCG35-87-R-7003 (-7003). Gudenau also protests the award of a contract to Castle Cape Roofing of Kodiak (Castle Cape) under solicitation No. DTCG35-87-R-7006 (-7006). Gudenau requests reimbursement for its lost profits, overhead and bid preparation costs.

We dismiss the protest and we deny the claim.

Solicitation No. R-7003 was issued for a contractor to repair the roof at Narrow Cape Loran Station in Juneau, Alaska. According to Gudenau, it submitted the only response to the solicitation, and during negotiations it agreed to various concessions requested by the Coast Guard. The Coast Guard, however, terminated the negotiations, subsequently issued solicitation -7006, and awarded a contract for the roof repairs to Castle Cape. Gudenau asserts that Dow Chemical, the material supplier, will only supply materials to a qualified installer and that Castle Cape does not meet this requirement. Gudenau also alleges that Castle Cape may not be able to provide the proper general liability insurance. Finally, Gudenau asserts that after award the Coast Guard changed the performance requirements because Castle Cape was unable to obtain the necessary materials.

Our Bid Protest Regulations provide that to be timely a protest based on other than an impropriety apparent from the

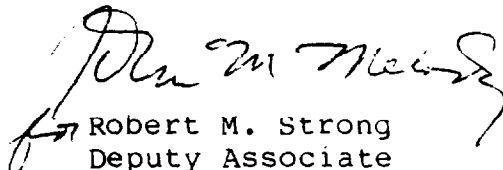
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face of the solicitation must be filed, i.e., received in our Office, within 10 working days after the protester knows or should know the basis for its protest. 4 C.F.R. § 21.2(a)(2) (1986). The Regulations require that protests be addressed to: "General Counsel, General Accounting Office, Washington D.C. 20548, Attention: Procurement Law Control Group." 4 C.F.R. § 21.1(b).

Gudenau's protest is untimely. The firm sent the protest, dated December 22, 1986, to the General Accounting Office (GAO) at 701 C Street, Anchorage, Alaska, the address of a GAO suboffice that closed earlier that year. The protest was forwarded from Alaska to our Seattle, Washington, Regional Office, which in turn forwarded it to the General Counsel in the main GAO building in Washington, D.C. We received the protest on January 15, 1987. Since Gudenau's protest was not received in our Office in Washington, D.C. until more than 10 days after Gudenau knew the basis for the protest, it is untimely and we will not consider it on the merits. See Little People's Productivity Center, Inc., B-222103, Mar. 21, 1986, 86-1 C.P.D. ¶ 286, 65 Comp. Gen. ____. The fact that Gudenau may not have known the correct address to which to mail its protest does not change this result. Protesters are charged with constructive notice of our filing requirements since the requirements, set out in our Regulations, have been published in the Federal Register. Little People's Productivity Center, Inc.--Request for Reconsideration, B-222103.2, Apr. 17, 1986, 86-1 C.P.D. ¶ 379.

As to Gudenau's monetary claim, we will not consider a claim for bid preparation costs which is submitted in connection with an untimely protest. Energy Forms, Incorporated, B-220894, Nov. 1, 1985, 85-2 C.P.D. ¶ 511. In addition, there is no legal authority which would permit the recovery from the government of anticipated profits or lost overhead. See A&A Realty, Inc., B-222139, June 20, 1986, 86-1 C.P.D. ¶ 575.

The protest is dismissed and the claim denied.


for Robert M. Strong
Deputy Associate
General Counsel