

J. Melody



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McCarthy Land Company--Reconsideration
File: B-225524.2
Date: March 2, 1987

DIGEST

Dismissal of protest as untimely is affirmed where protester was aware of agency's objections to protester's offer prior to receipt of notice rejecting offer, and did not protest within 10 working days after notice of rejection.

DECISION

McCarthy Land Company requests reconsideration of our dismissal of its protest of a contract award to Charles Johnson under a Department of Agriculture solicitation to lease office space in Minnesota. We dismissed the protest as untimely filed. We affirm the dismissal.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), a protest must be filed in our Office no later than 10 working days after the basis of protest was, or should have been, known. McCarthy's protest submission indicated that McCarthy received written notice of the rejection of its offer, and of the October 15, 1986, award to Johnson at a higher price, on November 4. Since McCarthy's protest challenging the propriety of the award was not received in our Office until November 28, more than 10 working days later, we determined that it was untimely.

McCarthy requests reconsideration on the ground that it did not know the bases of protest on November 4, because the notice it received did not explain the reasons for rejection of the offer. McCarthy claims it was not on notice of its protest bases until November 20, when the contracting officer allegedly refused to disclose the reasons for rejecting the offer. At that point, McCarthy protested based on what it suspected (apparently from October conversations with agency contracting personnel) were the reasons for the rejection, i.e., the agency preferred a new building in a downtown location, and was biased against McCarthy.

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While we agree with McCarthy that the mere suspicion of protest grounds does not necessarily constitute knowledge of those grounds, the record indicates that McCarthy actually had reason to know the bases for the rejection on November 4. In this regard, in an October 17 letter from McCarthy to Agriculture, McCarthy discussed its conversation of that same date with Agriculture contracting personnel apparently concerning the point scoring of the offers. McCarthy stated in this letter that it is aware the agency was "still trying to go back to the new building" (which McCarthy seemingly knew was in a downtown location, and went on to argue that its building is "the equivalent of a new building." This letter shows that McCarthy knew in October the reasons Agriculture did not prefer its building, so that McCarthy reasonably should have known on November 4 that these same reasons were the basis for the rejection of its offer. Thus, since McCarthy's protest was not received within 10 working days after November 4, it was untimely.

Our dismissal of the protest is affirmed.

for *Sepperson Efron*
Harry R. Van Cleve
General Counsel