



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Urban Indian Council, Inc.
File: B-225955.2
Date: May 12, 1987

DIGEST

1. Assuming as the protester contends that the contracting agency received a copy of a protest to the General Accounting Office (GAO) within 10 working days of when the protester learned of its basis for protest, this would not suffice to satisfy the purpose of GAO's timeliness requirement, which is to ensure that a protest is resolved expeditiously. The expeditious resolution of a protest requires that the protester initiate the protest process by filing with GAO in a timely manner.
2. A protester assumes the risk that its use of certified mail to transmit a protest to the General Accounting Office (GAO) will not result in timely receipt of the protest by GAO.
3. The Bid Protest Regulations are designed to provide due process by affording all parties a reasonable opportunity to present their case, and the dismissal of a protest not filed in a timely manner as required by these regulations does not constitute denial of due process.
4. The General Accounting Office (GAO) will not consider the effect on an awardee's responsibility of its alleged use of the protester's confidential information in preparing its successful bid because the matter concerns a dispute between private parties which GAO does not adjudicate in a bid protest.

DECISION

Urban Indian Council, Inc. requests reconsideration of our dismissal of its protest of the award of a contract to Michael Services Corporation (MSC) by the Portland (Oregon) Area Indian Health Service, Department of Health and Human Services, under request for proposals No. 600-8-4-86. The request for reconsideration is denied.

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By letter dated December 15, 1986, the Council filed a protest with this Office complaining of the award to MSC, primarily on the basis that the awardee allegedly was not responsible. We dismissed the protest as untimely because the protester stated in its protest that it had received notice of the award from the agency on December 5. Under our Bid Protest Regulations, protests alleging other than solicitation improprieties must be filed within 10 working days of when the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). The term "filed" means receipt of the protest submission by our Office. 4 C.F.R. § 21.2(b). We did not receive the Council's protest submission until December 24, more than 10 working days after December 5.

The protester bases its request for reconsideration on a number of grounds. As discussed below, none of these grounds provides a basis for us to reconsider our dismissal of the protest.

The protester argues first that it substantially complied with the timeliness requirement of our regulations since the purpose of that requirement is to put the contracting agency on notice of the basis for the protest and, says the protester, it mailed a copy of the protest to the Indian Health Service on December 15. The protester contends that the agency must have received the copy within 10 working days of December 5. Contrary to the protester's argument, however, the purpose of our timeliness requirement is to ensure that protest issues are resolved expeditiously, with minimum disruption of the procurement process. See Shaw Aero Development, Inc., B-221980, Apr. 11, 1986, 86-1 CPD ¶ 357. To this end, a protester must initiate the protest process by filing here in a timely manner. Thus, even assuming the agency received its copy of the protest within 10 working days of December 5, this would not suffice to satisfy the requirement to file a timely protest with this Office. See Bill Hickman, General Contractor, Inc., B-203195, May 26, 1981, 81-1 CPD ¶ 412.

The protester also argues that we should consider its protest under section 21.2(c) of our regulations. That section provides that we may consider a protest that is not filed here in a timely manner either for good cause shown or because the protest raises issues significant to the procurement system.

The Council seeks to establish "good cause" by pointing out that it mailed its protest to this Office by first-class, certified mail within 6 working days of when it learned of its basis for protest. Its reasonable reliance on this method of transmitting its protest, says the Council,

constitutes good cause for us to consider its protest on the merits. We do not agree. The phrase "good cause" in our regulations refers to some compelling reason beyond the protester's control that prevented the protester from filing a timely protest. See Sweepster Jenkins Equipment Co., Inc.--Request for Reconsideration, B-221726.2, Mar. 7, 1986, 86-1 CPD ¶ 276. There has been no showing that such a compelling reason existed here. A protester makes use of the mails at its own risk, and a delay in the mails does not serve as a basis for waiving our timeliness requirement. Hexagon Honeycomb Corp.--Reconsideration, B-219316.2, Aug. 1, 1985, 85-2 CPD ¶ 117. The fact that the Council mailed its protest by certified mail is not relevant in this regard. Id.

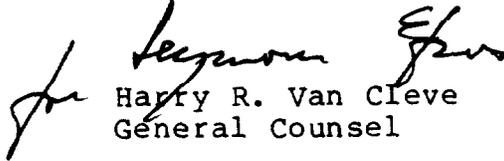
The matter the Council contends should be considered under the significant issue exception in our regulations--that is, the effect on the awardee's responsibility of its alleged use of the Council's confidential information and management employees in preparing the awardee's proposal--is one that this Office would not consider even if timely raised. Such allegations involve disputes between private parties which this Office will not adjudicate in the context of a bid protest. Washington State Commission for Vocational Education--Reconsideration, 64 Comp. Gen. 681 (1985), 85-2 CPD ¶ 59. Moreover, we generally will not consider challenges to an agency's affirmative determination of a particular offeror's responsibility. 4 C.F.R. § 21.3(f)(5).

Next, the Council contends that dismissal of its protest on timeliness grounds was improper because our regulations do not expressly provide for such a "penalty" and because the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.104(c)(5) (1986) already provides a "remedy." Contrary to the protester's argument, however, our regulations expressly provide that this Office will summarily dismiss a protest that is untimely on its face. 4 C.F.R. § 21.3(f). The cited FAR provision states that a contracting agency need not suspend contract performance or terminate an awarded contract when it receives notice of a protest filed with this Office more than 10 calendar days after award; it does not purport to address the consequences of filing an untimely protest with this Office.

Finally, the Council contends that due process requires that it be allowed a reasonable opportunity to present its objections to the award. Our regulations are designed to provide due process by affording all parties to a protest a reasonable opportunity to present their case. See E-Systems, Inc., B-191346, Mar. 20, 1979, 79-1 CPD ¶ 192. We are not

aware that due process has ever been construed to mean that a party's case must be heard regardless of that party's failure to comply with a forum's reasonable filing requirements.

The request for reconsideration is denied.


Harry R. Van Cleave
General Counsel