

Cooper



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Shamrock Foods Company/Sun West Services, Inc.
File: B-228892
Date: October 13, 1987

DIGEST

Protesters are charged with constructive knowledge of Bid Protest Regulations, and incorrect advice by an agency as to the filing requirements of those regulations is not a defense to dismissal of a protest as untimely.

DECISION

Shamrock Foods Company/Sun West Services, Inc., protests the exclusion of its proposal from the competitive range and award of a contract to Noble/Sysco Food Services, Inc., under request for proposals (RFP) No. N00-87-24, issued by the Department of the Interior, Bureau of Indian Affairs, for food services to Navajo Area schools in Arizona and New Mexico. Shamrock contends that Interior's decision to exclude its proposal from the competitive range was not fair, reasonable or consistent with the evaluation criteria.

We dismiss the protest as untimely.

The solicitation was issued on April 6, 1987. On June 24, Interior informed Shamrock that its proposal had been excluded from the competitive range. Shamrock protested that decision to the agency on July 7. In a July 23 letter, Interior denied Shamrock's protest and provided the rationale for its decision. Interior stated that Shamrock's proposal was deficient because it offered a joint venture that did not meet the conditions for contractor team arrangements set forth in the RFP, and failed to specify a prime contractor or delineate the responsibilities of each team member. Interior also found that Shamrock had included certain unacceptable post-award conditions in its proposal. In addition, Interior questioned Shamrock's technical capability, stating that the firm relied too heavily on the existing food service's limited expertise, had merely adequate equipment and facilities, did not have the requisite 10 years acceptable experience, did not

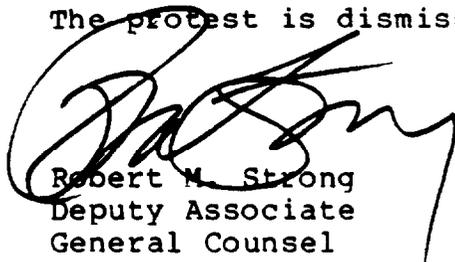
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demonstrate the capability to make deliveries to isolated schools under all conditions, and did not have a system in place for dealing with commodity distribution.

In that letter, Interior also incorrectly advised Shamrock that it could appeal the denial of its protest within 30 days to the Office of Hearings and Appeals, Interior Board of Contract Appeals. Shamrock filed such an appeal on August 20, and on August 24 the contracting officer notified Shamrock that its appeal of Interior's decision should have been filed with the General Accounting Office rather than the Interior Board of Contract Appeals. Shamrock filed its protest with our Office on August 27.

Our Bid Protest Regulations state that where an initial protest has been filed with the contracting agency, a protest to our Office must be filed within 10 working days after notification of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1987). Prospective contractors are on constructive notice of our Regulations, since they are published in the Federal Register and the Code of Federal Regulations. See B & B Boat Building Inc.--Reconsideration, B-220852.4, Jan. 22, 1986, 86-1 C.P.D. ¶ 69. Moreover, our Regulations, which provide objective criteria for application to all protests before our Office, may not be waived by representations or advice of a contracting official. Auburn Timber, Inc.--Request for Reconsideration, B-221523.2, Feb. 20, 1986, 86-1 C.P.D. ¶ 182; Ogden Allied Services Corp.--Reconsideration, B-224692.2, Oct. 20, 1986, 86-2 C.P.D. ¶ 471. Consequently, while it is unfortunate that Shamrock was not familiar with, and was misadvised about, our filing requirements and thus did not file a protest in our Office until more than 1 month after the denial of its agency-level protest, this does not excuse the untimeliness of its protest. Killeen Pest Control, Inc.--Request for Reconsideration, B-223778.2, Jan. 7, 1987, 87-1 C.P.D. ¶ 21.

The protest is dismissed.



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