



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Professional Office Center
File: B-229704
Date: December 17, 1987

DIGEST

1. Even if doubts are resolved in protester's favor, and protester's letter to contracting agency requesting information is construed as a protest, protester's subsequent protest filed with General Accounting Office 2 months after receiving agency's response detailing basis for award is untimely.
2. Neither protester's unfamiliarity with General Accounting Office (GAO) Bid Protest Regulations nor its decision to await the outcome of congressional initiated inquiry provides a basis to alter the protester's responsibility to conform to GAO's filing requirements.

DECISION

Professional Office Center protests the award to Dr. Stephan L. Hatch of a lease for office space required by the Farmer's Home Administration, Department of Agriculture, under Solicitation for Offers No. N-87-45. Professional, the apparent low offeror, alleges that the award is improper because price should have been the determining factor, that the award is otherwise not consistent with the evaluation criteria contained in the solicitation, and that the awardee's proposal was not acceptable because what was offered did not meet all the specification requirements.

We dismiss the protest as untimely.

The solicitation was issued for a 5-year lease of office space for the agency's Bridgton, Maine county office. Best and final offers were received from two offerors, Professional and Dr. Hatch, on August 7. Award was made to Dr. Hatch on August 21. By letter dated August 31, Professional requested that the agency explain the basis for award. Professional alleged that the award was improper but did not state a reason for its belief. By letter of the

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same date, Professional also requested a review of the procurement by a congressional office. In its letter to the congressional office, Professional listed several reasons for its belief that the award was improper, including its contention that the evaluation criteria were improperly applied and that the agency waived at least one solicitation specification.

By letter of September 11, the agency informed Professional that the award was based on price as well as such factors as accessibility to the physically handicapped and environmental considerations, as provided in the solicitation. Upon receipt of the agency's reply, Professional decided not to file a protest with our Office until the agency responded to the inquiry initiated by Professional's August 31 letter to the congressional office. The agency's response to the Member of Congress, in which the agency reiterated that award was predicated on the solicitation's evaluation factors and detailed its reasons for selecting the awardee, was not received by Professional until November 16. Professional filed its protest with our Office on November 30.

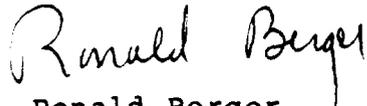
Our Bid Protest Regulations provide that protests of allegedly improper agency actions must be filed with either the contracting agency or our Office within 10 days of when the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1987). If the protest is initially filed with the contracting agency, any subsequent protest to our Office must be filed within 10 days of the protester's actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3).

Resolving any doubt as to timeliness in Professional's favor, and construing its August 31, 1987 letter to the contracting agency as a protest, see Consolidated Devices, Inc.--Reconsideration, B-225602.2, Apr. 24, 1987, 87-1 CPD ¶ 437, we nonetheless find Professional's protest to our Office filed 2 months after receipt of the contracting agency's response of September 11 to be clearly untimely. Although Professional states that it was unaware of our timeliness rules and argues that it acted reasonably in waiting for a response to its congressional inquiry prior to protesting to our Office, neither its unfamiliarity with our regulations nor its decision to await the outcome of the congressional inquiry provides a basis to excuse the failure to conform to the filing requirements of our regulations.

First, our regulations are published in the Federal Register and the Code of Federal Regulations and protesters are charged with constructive notice of their contents.

Second, we impose timeliness rules so that we can consider protests while the matter is current and without causing unnecessary disruption to the procurement process. That purpose would be subverted if we permitted protesters, after adverse action is taken on an agency-level protest, to delay filing here while they pursued other avenues of review outside the protest process. Therefore, we do not believe that the protester acted reasonably in waiting for a response to its congressional inquiry before protesting here. See The Silcraft Corp., B-226605.2, Sept. 23, 1987, 87-2 CPD ¶ 290; P&P Brothers General Services, B-227031, Apr. 28, 1987, 87-1 CPD ¶ 449.

The protest is dismissed.


Ronald Berger
Deputy Associate
General Counsel