



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Universal Fuel, Incorporated

File: B-231870

Date: October 4, 1988

DIGEST

Protest filed more than 10 days after the protester was orally informed that its agency-level protest had been denied and the basis therefor is untimely; protester may not delay filing its protest until it has received, in writing, the agency decision with an enclosure of the General Accounting Office's Bid Protest Regulations, since a prospective contractor is charged with constructive knowledge of those regulations.

DECISION

Universal Fuel, Incorporated (UFI), protests the award of a contract to Flight International under request for proposals (RFP) No. DLA600-88-R-0052 issued by the Defense Logistics Agency (DLA), for alongside aircraft fuel delivery at the Naval Air Station, Norfolk, Virginia. UFI alleges that Flight is nonresponsible because it lacked experience in certain fueling operations including certain qualifications specifically required by the solicitation.

We dismiss the protest as untimely.

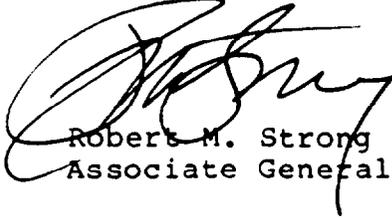
UFI initially protested to DLA on May 26, 1988, alleging that Flight lacked experience in hot refueling, pipeline transfers, or loading and off loading barge deliveries, and that contrary to the "Experience Qualifications" clause of the RFP, Flight had not successfully completed an aircraft fuel delivery contract of comparable size and complexity within the last 3 years. On June 16, in response to its protest, UFI was telephonically informed by a contract specialist at DLA that its protest had been denied and that a written decision of the same date would be sent to UFI.

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During this telephone conversation, the contracting specialist read in its entirety that paragraph of the denial letter setting forth the factual basis for DLA's determination that the awardee was a responsible contractor. According to UFI, when it then asked the contract specialist if there were any "time constraints in perfecting a protest," he responded that "there probably were but he was not sure." The letter, which had as an enclosure a copy of our Bid Protest Regulations, was sent to UFI on June 20; UFI filed its subsequent protest in our Office on July 5. DLA contends that UFI's protest in our Office is untimely since it was filed more than 10 working days after the oral notification that its agency-level protest was denied. UFI contends first, that it was not informed that the telephone call constituted an official notification of the contracting officer's denial of its protest, and second, that it is a small company and did not know what the timeliness requirements were for filing a protest.

Under our Bid Protest Regulations, where a protest initially is filed with the contracting agency, a subsequent protest to our Office must be filed within 10 working days after the protester learned of adverse action at the agency level. 4 C.F.R. § 21.2 (1988). We have expressly held that oral notification of the contracting agency's denial of the protest filed with it starts the 10-day period running, Elite Building Services, B-230867.2, June 10, 1988, 88-1 CPD ¶ 556, and that a protester may not delay filing its protest until it has received the agency's position in writing. Mid-America Engineering and Manufacturing Company, B-231694, Aug. 25, 1988, 88-2 CPD ¶ _____. UFI's further contention that it was unaware of the time limitations is without merit since prospective contractors are on constructive notice of our Bid Protest Regulations, since they are published in the Federal Register and the Code of Federal Regulations, even where erroneous information about protest procedures is provided by the contracting agency. Hi-Q Environmental Products Co.--Reconsideration, B-229683.2, May 19, 1988, 88-1 CPD ¶ 474. Here, the contracting specialist's statement that there "probably were" time constraints on filing a protest with our Office was, in fact, correct; he simply was not able at that time to provide the protester with the specific guidance found in our published regulations.

Since UFI failed to file a protest in our Office within 10 working days after it was orally advised of the denial of its agency-level protest, we dismiss the protest as untimely.



Robert M. Strong
Associate General Counsel