



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Bottom Line Services, Inc.

**File:** B-235800

**Date:** August 8, 1989

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### DIGEST

Protest filed more than 10 days after protester learns of basis for protest is untimely and will not be considered.

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### DECISION

Bottom Line Services, Inc., the incumbent contractor, protests the rejection of the bid it submitted in response to the Government Printing Office's (GPO) solicitation for bids on Program D295-S, for microfiche of Federal Aviation Administration publications. Bottom Line contends that the contracting officer improperly rejected its bid on the basis that Bottom Line was nonresponsible.

We dismiss the protest.

Solicitations were sent to 32 contractors; 4 bids were received. Bottom Line, the low bidder, was rejected as nonresponsible because of its unsatisfactory performance of the prior contract for the same requirement. A purchase order was issued to ANACOMP, Inc., the second-lowest bidder, on May 22, 1989.

Bottom Line contends that GPO's nonresponsibility determination was erroneously based on performance problems under the prior GPO contract which were not Bottom Line's fault. Instead, Bottom Line contends the performance problems were the result of the contract's deficiencies with respect to shipping instructions and material specifications, as well as increases in quantities ordered by GPO.

GPO argues that Bottom Line's protest should be dismissed as untimely. Specifically, GPO states that on May 23, during a phone call initiated by the protester, the contracting officer informed Bottom Line that its bid had been rejected based on the nonresponsibility determination. Therefore, GPO contends that the protest is untimely, because it was

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not filed within 10 days of May 23, the date on which the protester first learned of the basis of its protest.

Bottom Line argues that the phone call must have taken place later than May 23, because the contracting officer informed it during the call that the rejection letter, dated May 23, should have already been received by the protester. Additionally, the protester argues that the notification of rejection is required to be in writing, and since the May 23 rejection letter was not received until May 25, the 10-day period should be determined from the later date when written notification was received by the protester.

In support of its statement that the contracting officer notified Bottom Line of its rejection on May 23, GPO has provided our Office with the contracting officer's telephone memorandum of the phone call which is also dated May 23. GPO has also provided an affidavit from the contracting officer attesting to the fact that she wrote the memorandum right after the phone call as is her customary practice, and specifically denying that she told Bottom Line during the phone call that the May 23 rejection letter should have already been received by the firm. Rather, the contracting officer states that she informed the protester that it would be receiving the letter soon.

We find the protest to be untimely. It is clear from the record that Bottom Line was informed on May 23 that its bid had been rejected. Although the protester disagrees with GPO with regard to the exact date of the phone call, it has provided no contemporaneous evidence in support of its assertion that the call took place on a later date. On the other hand, we find convincing the contracting officer's contemporaneous memorandum of the telephone call which shows that the contracting officer did, in fact, tell Bottom Line's representative on May 23 that the firm had been found nonresponsible based upon its unsatisfactory performance record on the prior contract. Furthermore, under our Bid Protest Regulations, written notification of the basis of a protest is not required prior to protest; rather, the 10-day period begins to run when "the basis of protest is known or should have been known, whichever is earlier." 4 C.F.R. §

21.2(a)(2), (1988). In this case, since the protester knew of the rejection of its bid on May 23, its protest was required to be filed within 10 days of that date, or by June 7. Bottom Line's protest, which was filed on June 8, therefore is untimely.

The protest is dismissed.



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