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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: W. D. McCullough Construction Company and M&A
Equipment and Constructors Inc., a joint
venture

File: B-238460

Date: February 8, 1990

W. D. McCullough, for the protester.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest filed more than 10 days after protester was orally
informed that its agency-level protest had been denied is
untimely; protester may not delay filing its protest until
it has received the agency decision in writing.

DECISION

The joint venture of W. D. McCullough Construction Company
and M&A Equipment and Constructors Inc. (McCullough),
protests its rejection as nonresponsible under invitation
for bids (IFB) No. DACW56-90-B-0003, issued by the Depart-
ment of the Army for embankment rehabilitation of Wister
Lake, Poteau River, Oklahoma. McCullough challenges the
contracting officer's determination that the protester's
proposed individual sureties are nonresponsible.

We dismiss the protest.

The protester has provided us with a chronology of events
and correspondence which preceded the filing of the protest.
From this, it appears that at bid opening on November 21,
1989, the protester was the apparent low bidder. On
November 25, the contracting activity requested additional
supporting information concerning the existence of the joint
venture and the financial capacity of the proposed indi-
vidual sureties. After McCullough forwarded some informa-
tion, the contracting officer reviewed it, and on
December 10, notified McCullough that its bid was ineligible
for award because its individual sureties were determined to
be unacceptable. McCullough filed a written protest at the
contracting activity on December 10, challenging the

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nonresponsibility determination.^{1/} The contracting officer met with the protester on December 15, and informed it that the individual sureties proposed were unacceptable and that the contracting officer was still abiding by his decision. By a letter dated December 22, the contracting officer confirmed his December 15 denial of McCullough's protest.

On January 31, McCullough filed a protest in our Office alleging that the contracting officer had improperly rejected its proposed individual sureties.

As we have indicated, under our Bid Protest Regulations, where a protest initially was 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. 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, Harbour Air, Inc., B-235534.2, July 27, 1989, 89-2 CPD ¶ 86; dismissal aff'd, Harbour Air, Inc.--Request for Reconsideration, B-235534.3, Aug. 31, 1989, 89-2 CPD ¶ 201, and that a protester may not delay filing its protest until it has received the agency's position in writing. Id. Moreover, once informed of initial adverse agency action, a protester may not delay filing a protest within our Office while it continues to discuss the matter with the agency. Midwest CATV--Request for Reconsideration, B-233105.4, July 20, 1989, 89-2 CPD ¶ 64.

^{1/} On December 14, McCullough addressed a second letter of protest to the contracting officer, a copy of which it sent to our Seattle Regional Office, which forwarded it to our Office where it was received on January 11, 1990. Since this correspondence was addressed to the contracting officer, and not to our Office, it was not effective for purposes of filing a protest with us. We advised McCullough by letter that we were treating its December 14 letter only as an information copy of an agency-level protest, and pointed out that any subsequent protest to the General Accounting Office must be filed within 10 days of formal notification of actual or constructive knowledge of initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1989).

Since McCullough was informed on December 15 of the contracting officer's denial, its protest challenging that determination filed with us approximately 6 weeks later is untimely.

The protest is dismissed.

James Spangenberg
Per Robert M. Strong
Associate General Counsel