



Comptroller General  
of the United States

Washington, D.C. 20548

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# Decision

**Matter of:** Michael H. Casey

**File:** B-241590; B-241636; B-241638; B-241640

**Date:** January 17, 1991

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John M. Taffany, Esq., Bailey & Shaw, P.C., for the protester Carole W. Wilson, Esq., Department of Housing and Urban Development, for the agency. Richard P. Burkard, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protests filed more than 10 working days after the protester was orally informed of the basis of its protests are untimely. Oral information can be sufficient to put the protester on notice of the basis of its protests--written information is not required.

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## DECISION

Michael H. Casey protests the award of four contracts awarded to the law firm of Pope, Roberts, and Warren, P.C., under request for proposals (RFP) Nos. 24-90-115, 25-90-115, 26-90-115, and 27-90-115, issued by the Department of Housing and Urban Development (HUD) for real estate closing services in the San Antonio, Texas area. The protester alleges principally that the agency did not properly evaluate Pope's proposals.<sup>1/</sup>

We dismiss the protests.

The RFPs were issued on June 20, and following an amendment to the RFPs, the closing date for receipt of proposals was July 24, 1990. The RFPs provided that awards would be made to the responsible offerors whose proposals were considered most advantageous to the government, cost/price and other factors considered. The RFPs provided that the agency would evaluate

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<sup>1/</sup> The RFPs differed only in that they required closing services for properties located in separate locations in the San Antonio area. The proposals submitted by the offerors were also virtually identical.

proposals for demonstrated experience in closing sales: (1) single family properties; (2) FHA properties; and (3) in the geographical location covered by the RFP. The RFP also advised offerors that since HUD may award the contracts on the basis of initial offers, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

The agency received six proposals for each of the RFPs, except for No. 25-90-115, for which seven proposals were received. Upon receipt of proposals, members of an agency technical evaluation panel individually evaluated and scored the proposals. The panel then averaged the individual scores to determine a rating for each offeror. The panel determined that Pope submitted the highest-rated technical proposals for each of the RFPs. Since Pope's proposals were also the lowest-priced technically acceptable offers, the panel recommended that awards be made to Pope contingent upon its demonstrating that it had adequate bonding capacity to perform the contracts.

The agency states that on or about August 29, 1990, Casey was telephonically notified that the agency planned to make awards to Pope. The protester states that the telephone conversation took place in early September. Casey states that he was advised during the conversation that the agency determined that Pope's proposals received the highest score of the technical proposals and were also the lowest in price but that the contracts would not be awarded until Pope submitted bonds required by the RFPs. The contracts were awarded to Pope on October 1, 1990.

Casey filed its protests with our Office on October 10, alleging that the agency improperly evaluated Pope's proposals by rating them high technically. Casey asserts specifically that the awardee lacks experience in closing sales of FHA properties in the San Antonio area.

Our Bid Protest Regulations require that protests based on other than alleged improprieties in a solicitation be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990). The protester's receipt of oral information forming the basis of its protests is sufficient to start the 10-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. Here, we find that since Casey admits that he knew in early September that the agency intended to make awards to Pope based on Pope's highest technically rated, lowest-priced proposals, its protests filed with our Office on October 10 are untimely.

The protester argues that since the agency advised Casey that no awards would be made until Pope submitted bonds, that it was not required to protest until the bonds were received and awards actually had been made. We disagree.

The agency clearly determined that Pope's lowest-priced proposals were technically superior to the others and so advised Casey although it also indicated that the submission of bonds was required before HUD could actually award the contracts. (Of course, Casey would be timely to protest Pope's compliance with the bond requirement if it waited until after the agency decided to accept Pope's bonds.) Thus, Casey was aware of the agency's allegedly improper action, the evaluation of Pope's proposals, in early September, and Casey had no reason to believe that the technical evaluation was not final. There is no indication in the record that the protester acquired additional information relating to HUD's technical evaluation of Pope's proposals after the oral notification; rather, the protest filings were still based on the information orally obtained from the agency in early September. Since Casey possessed sufficient information upon which to base its protests in early September, it was required to protest within 10 days of that date.

The protester also argues that its protests should be considered under an exception to our timeliness rules, since it asserts that they raise issues significant to the procurement system. See 4 C.F.R. § 21.2(b) (1990). We decline to do so. Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protests are dismissed.

  
Michael R. Golden  
Assistant General Counsel