

Burkard



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Chestnut Venture Realty Limited Partnership  
**File:** B-242263  
**Date:** February 21, 1991

Philip M. Eisenberg for the protester.  
Adam C. Striegel, Esq., General Services Administration, 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.

## DIGEST

Protester's receipt of solicitation amendment that clearly indicated agency's adverse position on protester's agency-level protest constituted initial adverse agency action. Protest to the General Accounting Office, filed more than 10 working days later, is untimely.

## DECISION

Chestnut Venture Realty Limited Partnership protests a geographical restriction contained in solicitation for offers (SFO) No. RTN90175, issued by the General Services Administration (GSA) for leased office space for the United States Attorney's Office, Chattanooga, Tennessee. Chestnut contends that the geographical requirement for the location of the office space is overly restrictive and ambiguous.

We dismiss the protest.

The SFO, which was issued on September 19, 1990, provided that the space to be leased must be in a delineated area that is bounded by King Street on the south, Chestnut Street on the west, 4th Street on the north, and Market Street on the east. Another provision in the SFO, however, contained a list of "special requirements" of the U.S. Attorney's Office which included a requirement that the space be located within 2-4 blocks of the Federal Courthouse in Chattanooga. Apparently, some of the delineated area described by the street boundaries was more than 4 blocks from the Courthouse.

Chestnut submitted its offer on October 5, 1990. In a separate letter of the same date to the agency, Chestnut

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acknowledged that the space it offered was in a building located more than 4 blocks from the Courthouse, but requested that its offer be considered since it offered a potential savings to the government. Chestnut also asserted that its building was located in the delineated area set forth in the SFO.

By letter dated November 8, the agency advised the protester that its offer was rejected as nonresponsive since it offered space in a building that was more than 4 blocks from the Courthouse and outside the delineated area. The protester filed a protest with GSA, dated November 9, alleging that, although its building was located more than 4 blocks from the Courthouse, it was within the delineated area. The protester argued that it was improper to reject its offer based solely on the fact that it was not located within 4 blocks of the Courthouse.

On November 15, GSA amended the SFO to clarify the required location of the office space by deleting the geographically delineated area as described by street boundaries and stating that the space must be a maximum of 4 blocks from the Courthouse. The protester received this amendment, at the latest, on November 16. By letter dated November 16, the agency advised the protester that its protest was denied. That letter explained that the U.S. Attorney's Office requires that the location of its offices be no more than 4 blocks from the Courthouse. The letter also provided the protester with specific information about filing a protest with our Office.

Chestnut filed its protest with our Office on December 5, challenging the SFO requirement that the leased office space be within 4 blocks of the Courthouse.

When a protest is filed initially with the contracting agency, any subsequent protest to our Office must be received within 10 working days of the protester's notice of the initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1990). The term "adverse agency action" is defined in our Regulations as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. Here, the amendment to the SFO restating the requirement that the office space must be within a 4 block radius of the Courthouse was clearly prejudicial to the protester's position and thus constituted initial adverse agency action. See Varityper, B-224367, Aug. 12, 1986, 86-2 CPD ¶ 181. Since the protester received the amendment, at the latest, on November 16, its protest to our Office on December 5, more than 10 days later, is

untimely. The fact that GSA formally denied the protest at a later time does not alter this result. Weitzul Constr., Inc., B-216036, Feb. 12, 1985, 85-1 CPD ¶ 184.

With respect to the untimeliness of its protest, Chestnut contends in its comments to the agency's report, that it was delayed considerably because GSA "refused to provide meaningful help" in its effort to file a protest with our Office. The protester also states that incorrect information provided by the agency contributed to the delay. Contrary to the protester's assertions, the record shows that the agency promptly furnished the protester with sufficient information to file a protest with our Office, including our address. In any event, a protester is on constructive notice of the rules concerning the proper time for filing a protest since our Bid Protest Regulations are published in the Federal Register and appear in the Code of Federal Regulations, even where allegedly erroneous information about protest procedures is provided by a government agency. Whelen Eng'g Co., B-239189, Aug. 1, 1990, 90-2 CPD ¶ 89.

Accordingly, the protest is dismissed.



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