



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lawrence Realty
File: B-243063
Date: March 5, 1991

Joe E. Griffith, Esq., for the protester.
John W. Van Schaik, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Letter to contracting officer which expressed dissatisfaction with contract award and the belief that the contracting officer should reconsider the award selection was an agency-level protest even though it did not state that it was intended as a protest.
2. Protest filed with the General Accounting Office more than 10 days after agency denied agency-level protest is untimely. Protester's continued pursuit of the matter with the contracting agency did not alter its responsibility to conform to timeliness requirement of Bid Protest Regulations.

DECISION

Lawrence Realty protests the award of a contract to Charles Arnold under request for quotations (RFQ) No. 49-00-1-43, issued by the Department of Agriculture, Farmers Home Administration (FmHA), for exclusive real estate brokerage services.

We dismiss the protest as untimely.

After FmHA informed Lawrence Realty that the contract had been awarded to Charles Arnold, Lawrence Realty complained to the contracting officer in a November 2, 1990, letter that the award was unfair because the agency had not considered that it is a woman-owned small business, its performance on a recent contract was more successful than the awardee's on another contract, and its price was lower than the awardee's. The contracting officer responded on November 21 stating that ownership by a woman was not listed in the solicitation as a factor to be considered in making the award, the comparison of the two previous contracts was unrealistic, and price was not the overriding factor in the selection.

Lawrence Realty responded to the contracting officer's letter with a November 26 letter making essentially the same arguments. The contracting officer again rejected Lawrence Realty's arguments on December 20 and in a December 27 letter the firm once more raised the same complaints. In a February 11 letter, the contracting officer reiterated his rejection of Lawrence Realty's position and stated that letter was his "final decision."

Our Bid Protest Regulations provide that if an initial protest has been filed timely with the contracting agency, we will consider a subsequent protest to our Office if it is filed within 10 working days after the protester has acquired knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3) (1990). In this case, Lawrence Realty's November 2 letter to the contracting officer constituted a protest to the agency because it conveyed that firm's dissatisfaction with the award and its belief that the contracting officer should reconsider the award selection. Pulau Elecs. Corp.--Recon., B-215051.2, June 26, 1984, 84-1 CPD ¶ 672. In this regard, even if a letter to an agency does not explicitly state that it is intended to be a protest, our Office nevertheless will consider it as such where, as here, it conveys an expression of dissatisfaction and a request for corrective action. Mackay Communications--Recon., B-238926.2, Apr. 25, 1990, 90-1 CPD ¶ 426.

Section 21.0(f) of our Regulations defines adverse agency action 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," including a decision on the merits of a protest. FmHA's November 21 letter, which rejected Lawrence Realty's position, was a decision on the merits of the protest. See Pulau Elecs. Corp.--Recon., B-215051.2, *supra*. As a result, to be timely, Lawrence Realty's protest to our Office had to be filed within 10 working days of November 24, when it received the contracting officer's November 21 letter denying the agency-level protest; since it was not filed until February 25, more than 10 working days later, it is untimely.

Although Lawrence Realty complained to the contracting officer about the same matter two other times, and the contracting officer twice responded, section 21.2(a)(3) of our Regulations is clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. Accordingly, Lawrence Realty's decision to continue to pursue the matter at the agency and the contracting officer's repeated consideration of the matter did not alter Lawrence

Realty's responsibility to conform to the filing requirements
of our Regulations. Lake Region Propane Gas, Inc.--Recon.,
B-231182.2, May 24, 1988, 88-1 CPD ¶ 495.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "John Brosnan", followed by a horizontal line extending to the right.

John Brosnan
Assistant General Counsel