

K. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wachdienst Rheinland-Westfalen
GmbH--Reconsideration

File: B-241837.2

Date: March 8, 1991

Klaus Schonig for the protester.
Katherine I. Riback, 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 working days after the protester was orally informed of the basis of its protest is untimely. Oral information is sufficient to put the protester on notice of the basis of its protest--written notification is not required.

DECISION

Wachdienst Rheinland-Westfalen GmbH (WRW) requests that we reconsider our October 25, 1990, dismissal of its protest of the award of a contract to Professional Security Service (PSS) under request for proposals (RFP) No. DAJA76-90-R-0302, issued by the Army Contracting Command, Europe, Regional Contracting Office, for security guard services at Finthen Army Airfield, Mainz-Finthen. We dismissed the protest as untimely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), because the protest was filed more than 10 working days after the protester admittedly knew of its basis of protest, specifically, September 28, when WRW was orally informed that PSS had been awarded the contract.

We affirm our dismissal.

In its request for reconsideration WRW claims that its protest is timely because while it was orally notified on September 28 of the award of the contract to PSS, it did not receive "formal" written notice until October 17, 1990, and it filed its protest with our Office within 10 days of receipt of the written notification of award from the agency.

Our Bid Protest Regulations require that protests be filed not later than 10 working days after the basis for protest is

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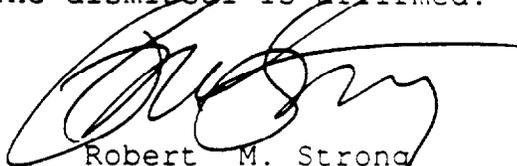
known or should have been known. 4 C.F.R. § 21.2(a)(2). The protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268, aff'd, B-238055.2, July 30, 1990, 90-2 CPD ¶ 79. Since WRW was orally notified on September 28 concerning the award to PSS, its protest filed with our Office on October 25 is untimely.

Alternatively, WRW asks that we consider its protest under the good cause exception of our timeliness rules, 4 C.F.R. § 21.2(b), which is only employed where some compelling reason beyond the protester's control prevents it from filing a timely protest. NPF Servs., Inc.--Recon., B-236814.2, Jan. 3, 1990, 90-1 CPD ¶ 9. Because the protester has failed to demonstrate that it was in any way prohibited from filing sooner, we decline to apply the good cause exception.

WRW also requests that we consider its protest under section 21.2(b) of our Bid Protest Regulations, which contains an exception to our general timeliness rules for issues that are significant to the procurement community. To prevent the timeliness requirements from becoming meaningless we apply this exception sparingly. Beckman Instr. Inc., B-236709, Sept. 18, 1989, 89-2 CPD ¶ 241. This protest does not fall under this exception, because the issues raised relate only to the affirmative responsibility of the awardee and do not have widespread significance to the procurement community.

Finally, as we noted in our dismissal, the protester's primary allegations questioning the capacity of the awardee to perform this contract concern the agency's affirmative determination of a contractor's responsibility. This issue will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Since no such showing has been made, our Office will not review the responsibility determination.

The dismissal is affirmed.


Robert M. Strong
Associate General Counsel