



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jemtec Electronics Corp.

File: B-244781

Date: August 2, 1991

Sam A. Nicolosi for the protester.
Gary Van Osten, Esq., Department of the Navy, for the agency.
Henry J. Ricardo, Office of the General Counsel, GAO,
participated in the preparation of this decision.

DIGEST

1. Letter from contracting officer denying agency-level protest constitutes initial adverse agency action, and a subsequent protest filed with GAO more than 10 days after receipt of letter is untimely.
2. Letter to GAO advising of protester's intention to elevate agency-level protest to GAO, which provides no specific grounds for the protest and merely promises that details will follow, does not constitute a protest.

DECISION

Jemtec Electronics Corp. protests the award of a contract by the Navy to any other bidder under solicitation No. N00104-91-R-M033. Jemtec alleges that the Navy lost the Jemtec proposal, which had been timely delivered to the agency by UPS, and asserts that it would have received the contract award had its proposal not been mishandled by the agency.

We dismiss the protest as untimely.

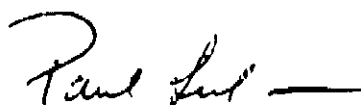
The closing date for receipt of proposals was February 9, 1991. On March 12, 1991, the protester learned from the Navy that it had awarded the contract to another firm on February 21, 1991, and that Jemtec's offer had not been received by the procuring activity. Jemtec filed a protest with the agency dated March 12. The Navy responded in a letter dated June 4 which denied Jemtec's request that its offer be considered.

When a protest is filed initially with an agency, any subsequent protest to our Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(3)). For purposes of timeliness, we generally assume delivery of a letter within 1-calendar week of its mailing. See Signal Corp.--Recon., B-238507.2, Apr. 25, 1990, 90-1 CPD ¶ 424. Thus, we presume that Jemtec received the agency's June 4 letter by June 11, and we note that the protester responded to this letter by letter to the agency dated June 20. In order to be timely, Jemtec's protest was required to be filed (received) in our Office within 10 days of June 11. Since the protest was not filed at our Office until July 15, 1991, it is untimely.

While Jemtec claims that the June 4 letter did not constitute a "formal" response to its protest, it clearly qualifies as an adverse agency action within the meaning of our Bid Protest Regulations. Adverse agency action is defined as any action on the part of the contracting agency which is prejudicial to the position taken in a protest filed with the agency. The regulation enumerates specific actions which may constitute adverse agency action, including a decision on the merits of the protest. 56 Fed. Reg. 3,759 supra, (to be codified at 4 C.F.R. § 21.0(f)). The agency's June 4 letter denied Jemtec's March 12 protest, and contrary to the protester's understanding, such a letter was sufficiently "formal" to constitute adverse agency action. See Mackay Communications--Recon., B-238926.2, Apr. 25, 1990, 90-1 CPD ¶ 426.

Jemtec also sent a facsimile transmission to our Office, which arrived on June 25, stating that its protest to the Navy was being elevated to our Office for consideration. This transmission provided no grounds of protest, stating merely that: "[a]dditional details will follow by fax and/or mail." An announcement of an intention to protest to our Office which does not raise any specific grounds of protest, stating instead that details will follow, cannot be considered a protest, and thus does not toll the 10-day period within which a protest must be filed. See Shankles Eng'g. & Consulting, 68 Comp. Gen. 43 (1988), 88-2 CPD ¶ 565; Pacific Fabrications--Recon., B-224065.2, Sept. 9, 1986, 86-2 CPD ¶ 277; Duracell U.S.A., B-225416, Jan. 7, 1987, 87-1 CPD ¶ 27.

The protest is dismissed.



Paul Lieberman
Assistant General Counsel