



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

Decision

Matter of: Performance Abatement Services, Inc.--
Reconsideration

File: B-241009.3

Date: August 14, 1991

Peter J. Rossi for the protester,
Jacqueline Maeder, Esq., and Paul Lieberman, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Dismissal as untimely of protest against propriety of mistake correction is affirmed where protest was filed more than 10 working days after direct notification to the protester by the agency of agency's correction of competitor's bid which made the competitor the bidder in line for award.

DECISION

Performance Abatement Services, Inc. requests reconsideration of our dismissal of its protest concerning invitation for bids (IFB) No. FO4626-90-B-0115, issued by the Department of the Air Force.

We affirm our prior dismissal.

The IFB was for an indefinite-delivery, indefinite-quantity contract for the removal of asbestos at various locations at Travis Air Force Base, California. At the time of bid opening, Performance Abatement was the apparent low bidder.

By letter dated January 22, 1991, the Air Force informed Performance Abatement that "[u]pon review of the bids . . . the Government detected an error in the calculations of Hess & Hess Construction, which made [Hess & Hess] the apparent low bidder." The Air Force stated that Performance Abatement's bid of \$1,783,240 "makes your company the second apparent low bidder" and requested that Performance Abatement verify its bid price. By letter dated January 29, Performance Abatement verified its price as correct and expressed its expectation of receiving the award.

By letter dated April 2, Performance Abatement first protested to the Air Force "the possible selection of another contractor as the responsive low bidder" under the solicitation. Performance Abatement argued that the solicitation did not allow for correction of bids since "the language concerning errors and omissions was specifically deleted on the [bid] schedule."

Performance Abatement protested to our Office on April 15, incorporating its agency-level protest and stating that it "seeks to be adjudged low responsive bidder for purpose of being awarded the contract. . . ." Performance Abatement also contended that it had not received any formal notification, nor did it have actual or constructive knowledge, of any adverse agency action regarding the selection of another firm as the low responsive bidder.


We dismissed Performance Abatement's protest as untimely because the protester's filings, which included the agency's January 22 letter, indicated that Performance Abatement had not protested within 10 working days after its basis of protest was known or should have been known. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(2)).

In its reconsideration request, Performance Abatement argues that the agency's January 22 letter stated only that Hess & Hess was the "apparent low bidder" but that Performance Abatement's protest "is relative to Hess and Hess being declared low responsive bidder." Performance Abatement argues its protest was timely since Performance Abatement had not received notification nor had any constructive knowledge of the agency's intent to award to Hess & Hess.

Our Bid Protest Regulations provide that, if a protest has been filed initially with the contracting agency, any subsequent protest to our Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed not later than 10 days after the basis of protest was known or should have been known. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.2(a)(3)); Symbiont, Inc., B-240043, Aug. 1, 1990, 90-2 CPD ¶ 90. We think it clear that upon receipt of the January 22 letter, Performance Abatement had explicit notification of its basis for protest, i.e., the Air Force's

correction of the mistake in Hess & Hess's bid. The fact that Performance Abatement had not received explicit notice of the agency's intent to award to Hess & Hess is simply not material--the basis for protest was the Air Force's correction of the Hess & Hess bid, which made Hess & Hess the bidder in line for award. Accordingly, Performance Abatement had 10 working days from receipt of the January 22 letter to file its protest that the correction was impermissible. Since Performance Abatement first filed its protest with the agency more than 2 months later, on April 2, the protest to us was properly dismissed as untimely.

The prior dismissal is affirmed.


Ronald Berger
Associate General Counsel