



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: King Kong Services, Inc.

File: B-246725

Date: December 3, 1991

Sidney J. Pew for the protester.
Christine Bednarz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest is dismissed as untimely under the Bid Protest Regulations when filed more than 10 working days after receipt of a denial of an agency-level protest on the same issue, even where the protest to the General Accounting Office (GAO) was sent by certified mail 2 weeks before it was received by GAO; a protester makes use of the mails to file a protest at its own risk.

DECISION

King Kong Services, Inc. protests the award of a contract for window washing services by the Department of Veterans Affairs under request for quotations (RFQ) No. 513-91-009.

We dismiss the protest as untimely under our Bid Protest Regulations.

King Kong protests that it was not solicited for the RFQ, even though it was promised it would be solicited. King Kong first protested this matter to the agency, which denied the agency-level protest by letter that the protester received on November 2, 1991. King Kong's protest on the same grounds was not received by our Office until November 20.

Our Bid Protest Regulations contain strict rules requiring the timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action" on the protest. 4 C.F.R. § 21.2(a)(3) (1991). Since King Kong's protest to our Office was filed (that is received in our Office, see 4 C.F.R. § 21.0(g)) more than 10 working days after receipt of the denial of its agency-level protest, it is untimely.

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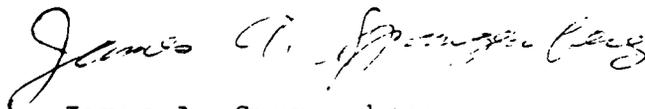
Our filing requirements are not trivial matters. The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

King Kong asserts that its protest should not be dismissed because it was mailed via certified mail on November 6, 2 weeks before our Office received the protest, and the agency received its copy of the protest on November 14. King Kong suggests that this delay in the mails constitutes "good cause," an exception to our timeliness requirements.

However, neither the fact that the protest was mailed, nor the date it was mailed is relevant to its timeliness, since the protest must be received in our Office within the requisite 10 working days to be considered timely filed; a protester makes use of the mails, including certified mail, at its own risk, and a delay in the mails does not serve as a basis for waiving our Regulations or determining good cause, so as to consider an untimely filed protest. The Richard-Rogers Group, Inc.--Recon., B-234141.6, Feb. 22, 1989, 89-1 CPD ¶ 194.

King Kong also asserts that the protest falls under the "significant issue" exception to our timeliness rules because the procurement practices and procedures used by the agency in not soliciting a quote from the protester are questionable. The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision. DynCorp, B-240980.2, Oct. 17, 1990, 90-2 CPD ¶ 310. King Kong's protest of the agency's failure to solicit it for a quote does not meet this standard; we have decided numerous cases discussing agency failures to solicit quotes from potential offerors. See, e.g., J. Sledge Janitorial Serv., B-241843; B-241845, Feb. 27, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 225.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel