



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

Decision

Matter of: Buck-El, Inc.
File: B-246425
Date: December 19, 1991

C. Edward Morris for the protester,
Katherine I. Riback, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest allegations filed more than 10 working days after protester learned of initial adverse agency action (notice of award to another firm) is untimely. Protester's continued pursuit of protest in another forum does not alter this result.

DECISION

Buck-El, Inc. protests the award of a contract to Arkansas Technologies under request for proposals (RFP) No. DAAA03-91-R-0067, issued by the Department of the Army for a flexible side wall conveyor system. Buck-El contends that its low proposal sent via telefax was improperly rejected.

We dismiss the protest as untimely filed.

The RFP was issued August 19, 1991, with a closing date of September 18. On September 26, the agency informed Buck-El that its proposal had been rejected because it was not complete. Buck-El filed an agency-level protest on September 30, at 9 a.m. objecting to the rejection of its proposal. Later, on that same day, Buck-El was informed that despite its protest, the agency had awarded the contract to Arkansas Technologies. On October 11, based upon advice it received from the agency, Buck-El protested the rejection of its proposal and the award to Arkansas Technologies to the Armed Services Board of Contract Appeals (ASBCA). On October 14, Buck-El received a letter dated October 7, from the agency denying its agency-level protest. On October 21, the protester received a letter from the ASBCA stating that it does not have jurisdiction over pre-award disputes. Buck-El filed its protest with our Office on October 25.

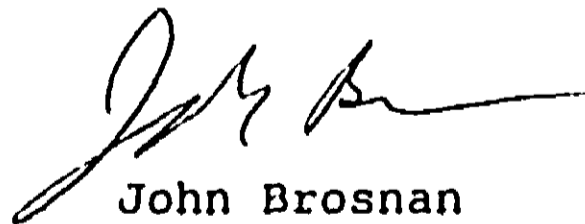
When a protest is filed initially with the contracting agency, any subsequent protest to our Office must be

received within 10 working days of the protester's notice of the initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1991). Adverse agency action is defined 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, among other things, a decision by the agency to award a contract. 4 C.F.R. § 21.0(f).

Here, the record shows that after the agency-level protest was filed Buck-El became aware of the agency's initial adverse action, the award to Arkansas Technologies, on September 30. Its protest to our Office filed almost a month later is clearly untimely. Harlan & Assocs., B-241590.2 et al., Feb. 12, 1991, 91-1 CPD ¶ 157. The fact that Buck-El continued to pursue its protest in another forum and that the Army formally denied the protest at a later time does not alter this result. Id.

Finally, Buck-El alleges that it was misled by agency officials concerning where and when to file a protest. While it is unfortunate that the protester was erroneously advised by the contracting agency that it could appeal the matter to the ASBCA and that it had 90 days to do so, we cannot permit another agency to, in effect, waive our timeliness standards by its erroneous advice. Air Cleaning Specialists, Inc.-- Recon., B-236936.2, Nov. 3, 1989, 89-2 CPD ¶ 422. These timeliness standards are strictly applied and exist to permit resolution of contract award disputes without undue disruption to the procurement process. Moreover, our Regulations are published in the Federal Register, and as a matter of law protesters are charged with constructive notice of their content. Therefore, protesters are presumed to know of the availability of this bid protest forum and of its rules. Id.

The protest is dismissed.



John Brosnan
Assistant General Counsel