



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

Decision

Matter of: Lone Star Gas Company
File: B-249700
Date: November 25, 1992

Paul M. Zeis, Esq., for the protester.
William E. Thomas, Jr., Esq., Department of Veterans
Affairs, for the agency.
Catherine M. Evans, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that agency improperly awarded contract to another firm on sole-source basis is dismissed as untimely filed where protester was aware of agency's intent to make the award more than 10 working days before filing its protest.

DECISION

Lone Star Gas Company protests the Department of Veterans Affairs' (VA) award of a sole-source contract to Gulf Gas for transportation of natural gas to the VA medical center in Dallas, Texas.

We dismiss the protest as untimely filed.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1992). A protester is charged with knowledge of the basis of protest at the point where agency personnel convey to the protester the agency's intent to follow a course of action adverse to the protester's interests. MIDDCO, Inc.--Recon., B-235587.2, Oct. 31, 1989, 89-2 CPD ¶ 402.

A Lone Star employee's contemporaneous notes of a July 20 conversation with the contracting officer state that the contracting officer "would not tell me if [the agency has] signed with Gulf Gas--they are supposed to." Based on this statement, it appears Lone Star was aware at least as of July 20 of the likelihood that the agency would enter into a contract with Gulf Gas, the adverse course of action on which Lone Star's protest is founded. Thus, to be timely under our Regulations, Lone Star's protest of the award to Gulf Gas had to be filed within 10 working days after

July 20. Lone Star did not file its protest until August 5, 12 working days later. Its protest therefore is untimely. See MIDDCO, Inc.--Recon., supra; Kimmins Thermal Corp., B-238646.3, Sept. 12, 1990, 90-2 CPD ¶ 198.

Lone Star seems to concede that it knew on July 20 of the possibility of the award to Gulf Gas but contends that this information was not sufficient to provide a basis of protest. Lone Star asserts that its basis of protest did not arise until July 22, when it learned that the contract with Gulf Gas was a sole-source agreement with a 10-year performance period. We disagree. The gravamen of Lone Star's complaint is not the 10-year period of the agreement but, rather, the agency's decision to make an award to Gulf Gas without allowing Lone Star to compete. The specifics of the agreement with Gulf Gas were not germane to the protest challenging this decision. Since Lone Star became aware that it would not have an opportunity to compete when the agency advised the firm of its intent on July 20, that is the point from which the 10-day timeliness period began to run. Under these circumstances, Lone Star was not entitled to wait until it learned that the award had been made before filing a protest. See MIDDCO, Inc.--Recon., supra.

The protest is dismissed.



John M. Melody
Assistant General Counsel