



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

Decision

Matter of: 26-30 South Howard Street Partnership
File: B-255790
Date: April 4, 1994

DECISION

26-30 South Howard Street Partnership protests the award of a lease to The David and Annie Abrams Realty Corporation under solicitation for offers (SFO) No. MMD92027, issued by the General Services Administration (GSA) for office and related space and 56 parking spaces to house the Bureau of Alcohol, Tobacco, and Firearms (ATF) in Baltimore, Maryland. The Partnership argues that the lease award was improper because only the Partnership's offer provided the "on-site" parking required by ATF.

We dismiss the protest as untimely filed.

This procurement represents the agency's third attempt to procure the office space for ATF in Baltimore. GSA identified two buildings in January 1993 and sent SFOs on February 26 to which both the Partnership and Abrams Realty responded. On April 30, 1993, GSA issued Amendment No. 1 to revise its parking requirements. Negotiations were conducted from May 6 through 12, and best and final offers were received by June 4.

On October 13, the agency awarded a 10-year lease to Abrams Realty, the low priced offeror who proposed space in the Rombro Building. On October 20, the Partnership filed an agency-level protest, through its attorney, contending that the lease was improperly awarded because the Rombro Building did not meet the SFO's "on-site" parking requirements and the site offered by the Partnership did. On October 28, GSA verbally advised the protester's attorney of the "contents" of the formal denial of the agency level protest that GSA issued to this attorney on October 29. On November 18, the Partnership protested the award to our Office. In its protest, the Partnership, through a new attorney, states; "[t]he Partnership did not receive, or otherwise learn of, . . . [the contracting officer's] decision until November 3."

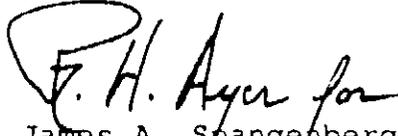
If a protest has been filed initially with the contracting agency, any subsequent protest to our Office, in order for it to be timely, must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Where the protester has actual or constructive knowledge that an agency has taken adverse action on an agency-level protest, the protester may not await the formal agency response to its protest before protesting to our Office. See General Hone Corp., B-242357.2, Mar. 22, 1991, 91-1 CPD ¶ 322; Swafford, Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268; Sheraton South Hills, B-225092, Nov. 10, 1986, 86-2 CPD ¶ 548; Blinderman Constr. Co., Inc., B-222523, June 16, 1986, 86-1 CPD ¶ 554. Thus, once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with this Office while it awaits written notice of the agency's action on its protest, see J.A. Jones Constr. Co., B-227296, Sept. 1, 1987, 87-2 CPD ¶ 215; Sheraton South Hills, B-225092, Nov. 10, 1986, 86-2 CPD ¶ 548, or while it continues to pursue the protest with the agency. See pH-logistics, Inc., B-244162, May 29, 1991, 91-1 CPD ¶ 515; Linn Timber, Inc.--Recon., B-225430.2, Nov. 18, 1986, 86-2 CPD ¶ 584.

In this case, while the protester asserts that "the Partnership", as distinguished from its attorney, did not learn of the adverse agency action on its October 20 agency-level protest until November 3, the contracting officer responded to this representation by stating that the protester's attorney was orally advised of the denial of the agency-level protest on October 28. The protester's only response to the contracting officer's assertion concerning this October 28 knowledge of initial adverse agency action was to state generally that its protest was timely filed.

Based on the record, we find the protester's attorney knew the basis of the denial of the agency-level protest on October 28. Obviously, notice to the Partnership's attorney is notice to the Partnership. See Columbia Research Corp., B-247073.4, Sept. 17, 1992, 92-2 CPD ¶ 184 (timeliness is measured from time counsel knew or should have known protest basis, and fact that protester itself received arguably

necessary information only later is irrelevant); Delta Infrared & Imaging Sys., Inc., B-247127.3, July 13, 1992, 92-2 CPD ¶ 52. Therefore, the Partnership's protest to our Office was untimely because it was not filed within 10 working days of October 28.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel

¹Although the agency only answered the protester's allegation concerning the date of receipt of notice of initial adverse action and did not urge our Office to dismiss the protest on this basis, the timeliness requirements of our Bid Protest Regulations may not be waived by the actions of the agency. See Air Cleaning Specialists, Inc.--Recon., B-236936.2, Nov. 3, 1989, 89-2 CPD ¶ 422; Republic Maintenance of Kentucky, Inc., B-231123, June 2, 1988, 88-1 CPD ¶ 524.