



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter Of: Jalbert & Associates, Inc.

File No.: B-259092

Date: November 16, 1994

DECISION

Jalbert & Associates, Inc. protests the award of a contract to Earl Industries, Inc. by the Department of the Navy under solicitation No. N00181-94-R-0137. Jalbert asserts that Earl offered an unreasonably low price which indicated its intention not to perform in accordance with the specifications.

We dismiss the protest as untimely because it was filed more than 10 working days after the protester initially received actual or constructive knowledge of adverse agency action on its initial agency-level protest.

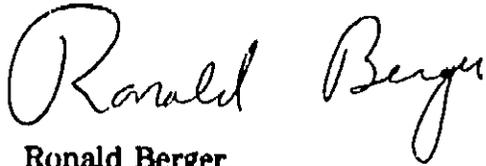
Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The term "adverse agency action" is defined in our Bid Protest Regulations 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. 4 C.F.R. § 21.0(f).

Jalbert initially filed its protest with the agency on April 26, 1994. The Navy denied Jalbert's protest by letter dated June 3. The protester subsequently pursued the matter with the Navy and did not protest to our Office until October 24. Since continued pursuit with the agency does not extend the time period for filing with our Office, Beckman Instruments, Inc.--Recon., B-239293.2, June 22, 1990, 90-1 CPD ¶ 585, the protest filed here is untimely.

As to Jalbert's contention that Earl submitted an unreasonably low priced offer, a protester's claim that a bidder or offeror submitted an unreasonably low price--or even that the price is below the cost of performance--is not a valid basis for protest. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. An agency decision that the contractor can perform the contract at the offered price is an affirmative determination of responsibility which we will not review absent a showing of possible fraud or bad faith on the part of

procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. W.K. Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. Although the protester asserts that the awardee will not meet the specification requirements, that is a matter for the Navy to deal with as part of its contract administration responsibilities. It is not a basis for sustaining a protest of an award.

The protest is dismissed.

A handwritten signature in black ink that reads "Ronald Berger". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Ronald Berger
Associate General Counsel