

Becker



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

## Decision

**Matter of:** Tower Elevator Corporation  
**File:** B-261700  
**Date:** June 19, 1995

### DECISION

Tower Elevator Corporation protests the award of contract by the Department of Veterans Affairs under solicitation No. 527-09-05. Tower argues that the award was improper because the low offeror's proposal is materially unbalanced.

We dismiss the protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals. Protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Further, our Regulations provide that a matter initially protested to the agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. To ensure meeting these long-standing timeliness requirements, a protester has the affirmative obligation to diligently pursue the information that forms the basis for its protest. Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86. A protester may not sit idly by and await the information which forms the basis of its protest but instead must diligently pursue the information within a reasonable time. American Electro-Coatings Corp., B-225417, Oct. 28, 1986, 86-2 CPD ¶ 487.

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In this case, award was made on or about October 1, 1994. On December 26, 1994, Tower requested under the Freedom of Information Act information with regard to the award. Tower's submission indicates that on January 24, 1995, the agency denied Tower's request stating that the information Tower requested was protected and not releasable. Tower appealed that decision on February 8 and again requested the information it was seeking. On February 9, it filed an agency-level protest alleging that the low offeror submitted a materially unbalanced bid. The agency denied that protest on May 24 because the protest was not timely filed. The instant protest was filed on June 8.

Tower does not indicate why it waited from October to December to pursue the information that provides the basis for protest. This delay does not constitute diligent pursuit. See Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494.

Accordingly, we consider this protest untimely, and it is hereby dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name and title.

Ronald Berger  
Associate General Counsel