

11/118 Proc I



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-194408

DATE: August 14, 1979

MATTER OF: Neal R. Gross and Company, Inc.

DL602569

DIGEST:

1. Protest that services covered by separate contract should have been ordered under pro-^{test}ester's Federal Supply Schedule contract filed 16 working days after protester was notified of separate award, is untimely and not for consideration.
2. GAO does not review affirmative determinations of responsibility in absence of showing of fraud or allegation that definitive responsibility criteria in solicitation were misapplied.

Neal R. Gross and Company, Inc. (Gross), protests the February 5, 1979, award of a contract for transcription services to Lawrence Johnson and Associates (LJA) by the Department of the Interior (DOI). Gross maintains that DOI was required to order this work under Gross' Federal Supply Schedule contract, the mandatory source for court reporting and transcription services during the period March 1, 1979, to February 29, 1980.

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The DOI contracting officer states that the protester telephoned him on February 26, 1979, and was informed at that time of the award to LJA and the nature of the services to be furnished under LJA's contract. Gross' letter of protest is dated March 13, 1979. It was postmarked March 19 and was received by our Office on March 20.

Under section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978), protests other than those based upon apparent solicitation improprieties must be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. The present

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protest, filed 16 working days after Gross was notified of its basis for protest on February 26, 1979, is therefore untimely and not for consideration.

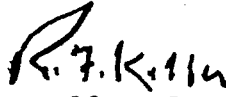
The protester argues that it should have been told of the award to LJA earlier and that DOI has taken an excessive amount of time to furnish a report responding to its protest. Considering that the protest was not filed within 10 working days after Gross admits it received notice of the LJA award, we believe it is unnecessary to address these contentions.

The protester also maintained in its March 13, 1979, letter that LJA does not have the capability to perform this type of contract. Gross asserted that LJA is not a court reporting company and has in fact subcontracted the work to another concern. While it is uncertain when the protester learned of this basis for protest, even assuming it is timely filed it is not for consideration. Our Office does not review affirmative determinations of responsibility in the absence of a showing of fraud or allegations that definitive responsibility criteria in the solicitation were misapplied. See, e.g., Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289. Neither circumstance is involved here.

Finally, to whatever extent Gross is asserting a claim for damages in connection with its Federal Supply Schedule contract, we note that the Contract Disputes Act of 1978, Public Law 95-563, November 1, 1978, provides that all claims relating to contracts entered into on or after March 1, 1979, are to be submitted to the contracting officer for a decision.

Gross has requested a "formal hearing" in the event a determination in its favor cannot be made. In this regard, our Office does not conduct formal hearings in bid protest cases; the conferences held pursuant to section 20.7 of our Bid Protest Procedures are informal meetings. Where, as here, the merits of the protest are not for consideration, we believe no useful purpose would be served by holding a conference. See Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374.

The protest is dismissed.



Deputy Comptroller General
of the United States