

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:
B-196646

October 9, 1980

The Honorable *H.* John Heinz, *III*
United States Senator
2031 Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Dear Senator Heinz:

DLG 03761
This is in response to your communication forwarding correspondence from the attorney for D&S Construction Company. The D&S correspondence involves a matter which was the subject of our letter of January 28, 1980, advising you of our opinion concerning D&S's complaint of "bid rigging" in connection with two Federal Aviation Administration (FAA) procurements. We concluded that D&S's protest was untimely.

D&S contends that its protest was timely and our letter to you incorrectly stated the facts. In addition, D&S has now submitted copies of correspondence with FAA concerning its claim to FAA under the Federal Tort Claims Act, 28 U.S.C. § 2671 (1976).

With regard to the claim, the Federal Tort Claims Act places jurisdiction for consideration of tort claims in the head of the Federal agency involved. 28 U.S.C. § 2672 (1976). Under 28 U.S.C. § 1346 (1976), the United States District Courts have jurisdiction for considering tort claims which have been finally denied by the head of the Federal agency. See 28 U.S.C. § 2675 (1976). Therefore, our Office has no authority to consider D&S's tort claim against FAA.

We have reexamined our position concerning the untimeliness of the protest in light of D&S's recent correspondence. D&S's contention that its protest was timely is based upon the erroneous assumption



012335

*Mr. Hoffmaster
15120
PLI*

ALLEGED

AGC 0030

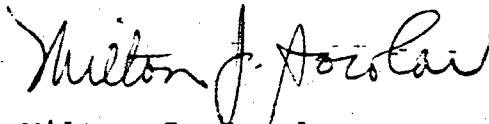
that no protest was required to be filed until it received notice of award of the contracts under the two FAA solicitations, which was not until well after its protest letter was filed in our Office on October 31, 1979.

However, our Bid Protest Procedures require the filing of a protest within 10 working days after the basis for the protest is known or should have been known. 4 C.F.R. § 20.2(b) (1980). D&S's charge of "bid rigging" is based, primarily, upon the fact that both solicitations were canceled after receipt of bids and various requests for the submission of prices on a negotiated basis were made. Apparently D&S believes this procedure was for the purpose of "bid rigging." Since the events upon which the protest is based had culminated by late July in the case of one solicitation and by late September in the case of the other solicitation, we concluded that D&S's protest received by our Office on October 31, 1979, was clearly beyond the 10-day limit. Therefore, the date upon which D&S received notice of the awards is irrelevant. Since D&S has not shown any error of fact or law in our previous opinion, it is affirmed.

For your information, we have examined FAA's response to D&S's tort claim and are unable to conclude that there was any impropriety in the procedures followed.

The enclosures with your letter are returned as requested.

Sincerely yours,



Milton J. Socolar
General Counsel

Enclosures