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DECISION



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

FILE: B-209226.2 DATE: November 29, 1982

MATTER OF: IMR Systems Corporation

DIGEST:

1. GAO policy is not to request documented reports on untimely bid protests, since no useful purpose would be served.
2. Oral notice of rejection of proposal, along with a statement of the reasons for the rejection, is sufficient to place offeror on notice of basis of protest.
3. When GAO has no record of receipt of a protest within the 10-day time for filing, a subsequently-filed copy of the protest is not adequate proof of timeliness, but must independently satisfy the 10-day requirement.
4. GAO will consider an untimely protest when "good cause," generally meaning some compelling reason beyond the protester's control, is shown. Telegraph company's failure to transmit telegram does not constitute good cause, since company is protester's agent, and error is legally attributable to protester as principal.
5. Where protest is clearly neither timely nor eligible for consideration under exception to timeliness rules of GAO Bid Protest Procedures, GAO will deny request for conference on issue of timeliness since it would have no useful purpose.

IMR Systems Corporation requests reconsideration of our decision dismissing as untimely a protest concerning the Department of Commerce's elimination of the firm from competition for an automated system for

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lithographic production of aeronautical charts under request for proposals No. NA-82-RFP-00019. We affirm our prior dismissal.

In IMR Systems Corporation, B-209266, October 26, 1982, 82-2 CPD _____, we stated that according to the agency, IMR had been advised by telephone on August 19 that its price was too high for continued negotiation. Any protest on that basis, we pointed out, should have been filed by September 2, or 10 working days after this oral notice. We had no record of receipt of a purported protest by telegram sent September 8, but concluded that neither the telegram nor a copy of it, delivered to our Office on September 24, met the timeliness requirements set out in our Bid Protest Procedures, 4 C.F.R. § 21.2 (1982).

In its request for reconsideration, IMR questions the content of the August 19 telephone conversation, which it argues was never confirmed by written notice that it was no longer being considered for award, and objects to our computing the time for filing a protest from this date without obtaining a documented report from the Department of Commerce.

IMR argues that it first learned of its basis of protest from the business community at large in early September, and that its September 8 telegram--if delivered--would have constituted a timely protest. The firm argues that because Western Union failed to transmit the telegram (an operator error which Western Union acknowledged in a letter to IMR's attorney), we should consider the matter under the "good cause" exception to our procedures. In a letter to our Office dated October 21, IMR further alleges that it was unfairly treated, since its proposal met the entire specification package, but other offerors, whom IMR believes were "nonresponsive," were allowed to revise their proposals in response to four amendments to the solicitation.

First, it is our policy not to request documented reports on untimely bid protests, since no useful purpose would be served by doing so. International Logistics Group, Ltd.--Reconsideration, B-202819.2, June 30, 1981, 81-1 CPD 544. Here, the contracting officer advised us by telephone that IMR had been notified that its price was considered too high for continued negotiation on August 19. If IMR wished to protest on this basis, it did not have the option of

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waiting for written confirmation or notice of an award to another offeror. See Mil-Air, Inc., B-191424, July 20, 1978, 78-2 CPD 55.

However, even if we assume that IMR first learned of its basis of protest in early September, its September 24 filing is untimely. As we stated in our original decision, in cases where we have no record of receipt of a protest within the 10-day time for filing, a subsequently-filed copy of the protest is not adequate proof of timeliness, but must independently satisfy our requirements. See also Ray Allen Manufacturing Co. Inc., B-208853, September 21, 1982, 82-2 CPD 255.

As for consideration under the "good cause" exception found in our procedures, 4 C.F.R. § 21.2(c), application of this exception varies with the circumstances of each protest, but generally refers to some compelling reason, beyond the protester's control, which has prevented filing of a timely protest. 52 Comp. Gen. 20, 23 (1972).

Western Union's failure to properly transmit the September 8 telegram to our Office does not, however, constitute "good cause." The telegraph company was IMR's agent, and its operator's error was not a supervening reason "beyond the protester's control." Rather, the error is legally attributable to IMR, which, as principal, must bear the consequences of its agent's mistake. See generally, Ling Electronics, Inc.--Reconsideration, B-199748.2, October 1, 1980, 80-2 CPD 238, involving mishandling of a letter by a protester's local delivery service, similarly resulting in untimely filing.

IMR, through counsel, has requested a conference to discuss the timeliness of its protest. Section 21.7 of our procedures provides that a conference "on the merits" of a protest may be held at the request of a protester. The purpose of any such conference is to clarify facts, narrow legal issues, and to provide our Office and the parties with a better understanding of the protester's position. A conference on the question of timeliness, however, does not generally serve any of these purposes, and can only further delay settling the matter. See Clyde C. Rogers, B-191744, November 27, 1978, 78-2 CPD 363.

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Here, even if we accept the fact that IMR first learned the basis of its protest in early September, its September 24 filing is neither timely nor eligible for consideration as untimely due to "good cause," as defined by our cases. We therefore deny the request for the conference.

The prior dismissal of IMR's protest is affirmed.

for *Milton J. Fowler*
Comptroller General
of the United States