

Becker



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Envirosol Environmental Services, Inc.

File: B-270538

Date: December 1, 1995

DECISION

Envirosol Environmental Services, Inc. protests its proposal's exclusion from the competitive range under solicitation No. SP4400-95-R-0016 by the Defense Logistics Agency.

We dismiss the protest as untimely.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 14 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. Section 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(2)). In this regard, a protester's receipt of oral information forming the basis of its protest is sufficient to start the 14-day time period running; written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268.

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, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. Section 21.2(a)(3), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.2(a)(3)); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206. Thereafter, any subsequent protest to our Office after initially protested with a contracting activity, to be considered timely, must be filed within 14 calendar days of "actual or constructive knowledge of initial adverse agency action." Section 21.2(a)(3), 60 Fed. Reg. supra (to be codified at 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

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the agency. Section 21.0(f), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.0(f)); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58.

In this case, under the above rules, Envirosol's protest cannot be view as timely filed. Envirosol states that it was initially advised on September 1 that its proposal was no longer being considered. On September 13, Envirosol requested that the agency reconsider its determination and place its proposal back in the competition. The agency denied that request on September 27, and provided Envirosol with the basis for the rejection. By letter of October 5 Envirosol disputed the agency's conclusions for the rejection of the proposal. That letter, while not characterized by Envirosol as an agency-level protest, in effect constituted such a protest.¹ By letter of October 16, the agency affirmed its position, which constituted initial adverse action on that protest. The instant protest was filed on November 16, more than 14 days later. Since the protest here was not filed within the required time, it is untimely.

The protest is dismissed.

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¹Envirosol states that its first protest to the agency was by letter of October 20. Even if we view the October 20 letter as the initial agency-level protest, it would be considered untimely filed because Envirosol was aware of its basis for protest not later than September 27 when it received the agency's reasons for rejection of the proposal and therefore had to protest within 14 days of that date.