



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Paging Network of Washington, Inc.

File: B-274052

Date: August 13, 1996

Arthur J. Robinson III, for the protester.

Gena E. Cadieux, Esq., Department of Energy, for the agency.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests filed on and after August 8, 1996, are subject to the timeliness criteria set out in General Accounting Office's (GAO) Bid Protest Regulations as amended by the Final Rule published in the Federal Register on July 26, 61 Fed. Reg. 39039-47 (1996) (to be codified at 4 C.F.R. part 21). Therefore, a protest of other than an apparent impropriety in an invitation for bids must be filed not later than 10 calendar days after the basis of protest is or should have been known, whichever is earlier, as required by amended section 21.2(a)(2), 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(2)).

2. Since Final Rule amending GAO's Bid Protest Regulations was published in the Federal Register on July 26, 1996, vendors are charged with notice of its contents—including GAO's revised timeliness rules—as of that date.

DECISION

Paging Network of Washington, Inc. (PageNet) protests the rejection of its bid under Department of Energy (DOE) invitation for bids (IFB) No. DE-FB01-96AD71151 for paging service. We dismiss the protest as untimely.

The IFB required that the contractor be capable of providing local service within a 75-mile radius of any DOE site needing service. In its bid, PageNet advised that no paging company was capable of providing that level of service, and that PageNet, which covers more than 90 percent of the U.S., was "the most capable of providing the necessary coverage." DOE rejected PageNet's bid because of that response, and in its protest PageNet essentially reiterates the advice submitted with the bid.

PageNet's protest was filed in our Office on August 8, 1996. The protest therefore is subject to the timeliness criteria set out in our Bid Protest Regulations as amended by the Final Rule published in the Federal Register on July 26 (applicable

to protests filed on or after August 8), 61 Fed. Reg. 39039-47 (1996) (to be codified at 4 C.F.R. part 21). Section 21.2(a)(2), 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(2)), requires that a protest of other than an apparent impropriety in an IFB be filed not later than 10 calendar days after the basis of protest is or should have been known to the protester, whichever is earlier.¹

PageNet learned that its bid was rejected and the reason why in a July 19 telephone conversation with the contract specialist.² Since the protest to our Office was filed more than 10 days later, it is untimely. In this respect, the Final Rule amending our Regulations was published in the Federal Register on July 26, so that vendors are charged with notice of its contents—including our revised timeliness rules—as of that date. See Domation, Inc., B-228221, Sept. 28, 1987, 87-2 CPD ¶ 311.

We further point out that PageNet should have raised its concern about the 75-mile specification before submitting the bid. Section 21.2(a)(1) of our Bid Protest Regulations, 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(1)), requires that a protest of an apparent solicitation impropriety be filed before bid opening. (The July 26 Final Rule did not change this timeliness requirement.) The reason for that regulation is to give parties a fair opportunity to present their cases and resolve protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.—Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129.

Finally, whether the awardee fact complies with the requirement in issue is a matter of contract administration, which we do not review as part of our bid protest function. Bid Protest Regulations, section 21.5(a), 61 Fed. Reg. 39045 (to be codified at 4 C.F.R. § 21.5(a)).

The protest is dismissed.

Comptroller General
of the United States

¹Protests filed before August 8 were subject to a 14-day rule. See 4 C.F.R. § 21.2(a)(2) (1996).

²PageNet received a letter from DOE confirming that advice on July 25.