



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** The Real Estate Center

**File:** B-274081

**Date:** August 20, 1996

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Christopher Solop, Esq., and Lynn Hawkins Patton, Esq., for the protester. Jerold D. Cohen, Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protests filed on or after August 8, 1996 are subject to the timeliness rules 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). Pursuant to section 21.2(a)(2), 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(2)), GAO will not consider a protest challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and required if filed before the debriefing date offered to the protester (even if the protest basis was known before the debriefing); the protest instead should be filed not later than 10 days after the date on which the debriefing is held.

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## DECISION

The Real Estate Center (REC) protests the award by the Department of Veterans Affairs (VA) of a contract to any other offeror under solicitation No. 691-81-95 for property management and disposition services. We dismiss the protest.

REC received written notice on August 7, 1996 that an award had been made (the notice did not identify an awardee), and REC immediately requested a debriefing pursuant to the Federal Acquisition Regulation (FAR). Section 15.1004 of the FAR, which implements 41 U.S.C. § 253b(e) (1994), provides that if an agency receives a written debriefing request within 3 days after the offeror has received an award notice, the offeror must be debriefed and furnished the basis for the selection decision within 5 days of the agency's receipt of the request (if practicable). According to REC, however, the VA has not yet responded to the firm's request.

REC's protest was filed in our Office on August 9. The protest therefore is subject to the timeliness rules 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). Pursuant to section 21.2(a)(2), 61 Fed. Reg. 39043 (to be codified at 4 C.F.R. § 21.2(a)(2)), our Office will not consider a protest challenging a procurement conducted on the basis of competitive proposals where, as here, a debriefing is requested and required, if the protest is filed before the debriefing date offered to the protester (even if the protest basis was known before the debriefing); the protest instead should be filed not later than 10 days after the date on which the debriefing is held. This rule is designed to encourage early and meaningful debriefings and to preclude strategic or defensive protests, *i.e.*, protests filed before actual knowledge that a basis for protest exists or in anticipation of improper actions by the contracting agency. 61 Fed. Reg. 39040.

Accordingly, we dismiss the protest. In this respect, the VA has advised our Office that it has now scheduled a debriefing. As indicated above, a protest to our Office within 10 days afterwards will be considered timely. We also point out, however, that while the rule at section 21.2(a)(2) of our Regulations maintains a protester's opportunity to obtain meaningful review at our Office, the law requires an agency to stay contract performance only if the agency receives notice of a protest within 5 days after the debriefing date offered in response to a requested and required debriefing. 31 U.S.C. § 3553(d); FAR § 33.104(c).

The protest is dismissed.

Comptroller General  
of the United States

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