

DECISION

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

Ce 1249

FILE: B-187109

DATE: August 30, 1976

MATTER OF: Karl Doll GmbH

98103

DIGEST:

1. Protests to GAO must be filed by protester directly. 4 C.F.R. § 20.1(b). A request to contracting officer to forward a protest to GAO is not a proper filing.
2. A protest is filed when actually received. 4 C.F.R. § 20.2(b). Protest received over 1 month after initial adverse agency action, which was notice of award of contract to competitor, is untimely and not to be considered on its merits. 4 C.F.R. § 20.2(a). Ignorance of proper bid protest procedures is not "good cause", excusing late filing since publication in Federal Register constitutes constructive notice of GAO's bid protest procedures, and responsibility of one firm is not significant issue warranting consideration of protest on merits.

By letter dated June 8, 1976, to the contracting officer, counsel for Karl Doll GmbH protested the latter's disqualification from consideration for the award of solicitation No. DAJA 37-76-C-0624, issued by the Army Procurement Agency, Europe. The letter stated in part that:

"In the event this protest is denied by the Contracting Officer, this constitutes notice of protest to the Comptroller General prior to award. In that event, it is requested that the award be delayed until such time as the case has been decided by the Comptroller General."

The contracting officer replied, by letter dated June 21, 1976, that he had decided to award the contract to another firm "prior to resolution" of the protest and that the protest "has been forwarded to higher authorities for disposition."

In a letter to our Office, dated July 30, 1976, counsel for the protester inquired as to the progress of the protest. It is clear that the protester interpreted the contracting officer's reference to "higher authorities" as indicating the protest had been forwarded to our Office when in fact it had not.

Under our procedures governing bid protests, where the alleged impropriety is not apparent before bid opening or the closing date for receipt of initial proposals, protests must be filed with our Office no later than 10 working days after the basis for the protest is known or should have been known, or if timely filed initially with the contracting agency, no later than 10 working days after notification of, or actual or constructive knowledge of, initial adverse agency action regarding the protest. 4 C.F.R. § 20.2(a), 40 Fed. Reg. 17979 (1975), as amended at 40 Fed. Reg. 60035 (1975). A protest is filed when received by the contracting agency or GAO, as the case may be. 4 C.F.R. § 20.2(b), 40 Fed. Reg. 17979 (1975), as amended at 40 Fed. Reg. 60035 (1975). A protest to our Office must be in writing and addressed to General Counsel, General Accounting Office, Washington, D.C. 20548. 4 C.F.R. § 20.1(b), 40 Fed. Reg. 17979 (1975); Southern Packaging & Storage Co. Inc., B-181249, July 15, 1974, 74-2 CPD 28; Johnny Ryan Company, B-185524, January 20, 1976, 76-1 CPD 35.

Karl Doll GmbH's letter of June 8, 1976, addressed to the contracting officer can in no way be considered a protest to GAO since, a request by the protester to a contracting officer to forward a protest to GAO does not constitute filing of the protest, even if the contracting officer does forward the protest. Energy Piping Systems, Inc., B-185573, January 29, 1976, 76-1 CPD 64.

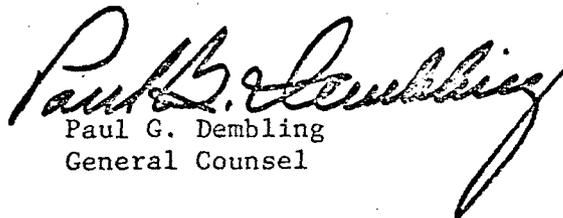
Since the first knowledge we had of this protest was by counsel's letter of July 30, 1976, which was received by us on August 4, 1976, the protest must be considered as filed with this Office on August 4, 1976. The contracting officer's letter of June 21, 1976, notified Karl Doll GmbH of the award to another bidder. Such an action is an adverse agency action for the purposes of 4 C.F.R. § 20.2(a). 52 Comp. Gen. 20 (1972); 54 Comp. Gen. 97 (1974), 74-2 CPD 91; Twycro, Inc., B-185126, November 19, 1975, 75-2 CPD 330. Therefore, Karl Doll GmbH's protest to us, being filed over 1 month after knowledge of initial adverse agency action, is untimely. 4 C.F.R. § 20.2(a).

An analogy may also be made here to cases where the protest was misaddressed and, as a result, delayed. Such protests have been found to be untimely and were not considered on the merits. It is

the protester's duty to ensure, to the best of his ability, the most rapid and certain means of transmittal of his protest. National Key punch Services, Inc., B-182304, October 22, 1974, 74-2 CPD 221. Only the address set forth in 4 C.F.R. § 20.1(b) should be used. In Johnny Ryan Company, B-185524, January 20, 1976, 76-1 CPD 35, a protest sent by certified mail 5 days before the deadline but misaddressed and therefore received after the deadline was held untimely and not within the "good cause" exception of 4 C.F.R. § 20.2(c), 40 Fed. Reg. 17979 (1975), as amended at 40 Fed. Reg. 60035 (1975).

Under 4 C.F.R. § 20.2(c), protests not filed timely may still be considered if "good cause" is shown or where the protest raises "issues significant to procurement practices or procedures." However, we have no information to indicate that a significant issue of widespread interest is involved. Furthermore, "good cause" under 4 C.F.R. § 20.2(c) is a compelling reason beyond the protester's control. 52 Comp. Gen. 20 (1972). Here, there is no such reason for any lack of knowledge on the part of Karl Doll GmbH. While Karl Doll GmbH is a German firm and may not actually be aware of the procedures governing protests before contracting agencies and our Office, it is charged with constructive notice of those procedures. The applicable regulations have been published in the Federal Register and such publication has been held to give constructive notice of the regulations. Winston Bros. Co. v. United States, 458 F. 2d 49, 53 (Ct. Cl. 1972); 53 Comp. Gen. 533 (1974), 74-1 CPD 47; Save Our Aerospace Program, Inc., B-184922, November 12, 1975, 75-2 CPD 299. Therefore, the method employed by Karl Doll GmbH to place its protest before our Office, even if used in ignorance of the proper procedure, did not result in a filing which may still be considered.

Accordingly, Karl Doll GmbH's protest regarding solicitation No. DAJA 37-76-C-0624 is dismissed as untimely.


Paul G. Dembling
General Counsel