

# DECISION



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

FILE: B-186586

DATE: July 9, 1976

MATTER OF: Mr. Scrub Car Wash Systems, Inc.

## DIGEST:

Protest concerning propriety of determination that protester was not responsible because it failed to submit adequate evidence of availability of sufficient funds will not be considered on its merits, since it was filed more than 10 days after formal notification of initial adverse agency action; moreover, protest does not come within exceptions to timeliness requirements of Bid Protest Procedures.

Mr. Scrub Car Wash Systems, Inc. (Mr. Scrub), protests the award by the United States Marine Corps of a contract to Sherman Car Wash Equipment Company for the procurement and installation of a car wash system at the Marine Corps Supply Center, Barstow, California.

Bids in response to the solicitation were opened on February 19, 1976. On April 26, Mr. Scrub received notification from the contracting officer that it was not the successful bidder. Mr. Scrub immediately filed a protest with the contracting officer, and by letter dated April 27 was informed that, although Mr. Scrub was the low bidder, it had been determined to be nonresponsible in the preaward survey and therefore was not eligible for award. The reason given for such determination was that Mr. Scrub " \* \* \* failed to submit adequate evidence of the availability of sufficient funds." The letter directed that any protest of the manner in which the preaward survey was conducted should be addressed to the Baltimore Defense Contract Administration District (DCASD), Defense Supply Agency, which conducted the survey, and if Mr. Scrub was not satisfied with that office's explanation, an appeal could be made to the General Accounting Office.

Upon receipt of that letter, Mr. Scrub telephoned the Commander of the Baltimore DCASD. Conversations between the two parties on May 3 and May 5 were summarized in a letter dated May 5 from the Commander to Mr. Scrub clarifying the reason for the determination

that Mr. Scrub was not responsible. By letter dated May 7, Mr. Scrub again contacted the procuring activity, and was informed by letter dated May 11 that, upon review of all facts and circumstances, the award must be considered proper and should not be disturbed. Mr. Scrub's subsequent protest to GAO was filed in this Office on May 24.

Section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in part that:

"\* \* \*If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification \* \* \* of initial adverse agency action will be considered \* \* \*."

Mr. Scrub's initial protest was filed with the Marine Corps on April 26, and Mr. Scrub was formally notified of the "initial adverse agency action" upon receipt of the April 27 letter from the contracting officer; that letter was received at some point prior to Mr. Scrub's May 3 conversation with the Commander of the Baltimore DCASD. Accordingly, Mr. Scrub's protest to GAO, filed May 24, is untimely and will not be considered on its merits.

In regard to the above, we recognize that Mr. Scrub was specifically directed by the contracting officer in the April 27 letter to pursue its protest, if desired, with the Baltimore DCASD before filing a protest with this Office. However, our Bid Protest Procedures are published in the Federal Register, and Mr. Scrub was, therefore, on constructive notice of their contents, including the time limits set for filing protests. Twycroft, Inc.--Request for reconsideration, B-185126, December 23, 1975, 75-2 CPD 408; Save Our Aerospace Program, Inc.--request for reconsideration, B-184922, November 12, 1975, 75-2 CPD 299. Moreover, while we realize that a protester may consider an agency's initial adverse action to be ill-founded or inadequately explained, leading the protester to seek reconsideration or clarification at the agency or other level, it is nevertheless obligatory that the protest be filed after notification of initial adverse agency action. Rowe Industries, B-185520, January 8, 1976, 76-1 CPD 13; 52 Comp. Gen. 20 (1972). In any event, Mr. Scrub's protest to this Office was filed more than 10 days after the telephone conversations of May 3 and 5 with the Commander of the Baltimore DCASD which were summarized in the May 5 letter to Mr. Scrub.

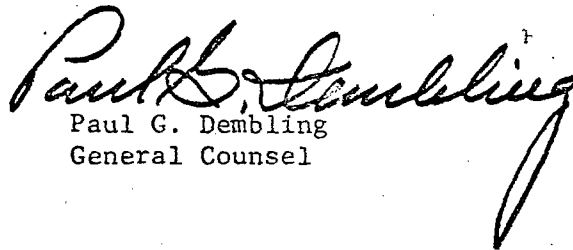
B-186586

Mr. Scrub urges that we consider its protest, even if we find it to be untimely filed, under section 20.2(c) of our Bid Protest Procedures, which provides as follows:

"The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely."

"Good cause" generally refers to some compelling reason, beyond the protester's control, which has prevented him from filing a timely protest. 52 Comp. Gen. supra. No such compelling reason has been presented here. With respect to the contention that the protest raises issues significant to procurement practices or procedures, we have indicated that a protest concerning responsibility is not considered to come within this provision. 52 Comp. Gen. supra.

Accordingly, the merits of the protest will not be considered.

  
Paul G. Dembling  
General Counsel