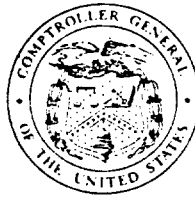


DECISION



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

61402

FILE: B-186588

DATE: August 26, 1976

99604

MATTER OF: Emerson Electric Co. (Rantec Div.)

DIGEST:

Protest of sole source procurement filed with GAO more than 10 days after initial adverse agency action is untimely filed and not for consideration.

The Rantec Division of Emerson Electric Co. (Rantec) protests the Naval Electronic Systems Command's (Navy) intended sole source award of a contract for 13 solid state shipboard TACAN antennas under request for proposals (RFP) N00039-76-R-0188(s) to the Avionics Division of International Telephone and Telegraph Corporation (ITT). The protested solicitation was synopsized in the Commerce Business Daily on January 7, 1976 with a closing date for receipt of initial proposals of March 10, 1976. Rantec initially protested the sole source nature of the solicitation to the Navy on April 7, 1976. The Navy denied Rantec's protest by letter dated April 23, 1976 which the Navy has advised was received by Rantec on April 26, 1976. It was not until May 24, 1976 that Rantec protested to this Office. The above facts were not initially evident but became apparent once the case was further developed.

Based on the above it appears Rantec's protest to GAO is untimely, it being lodged more than 10 days after initial adverse agency action, 4 CFR 20.2(a) (1976).

Accordingly, the protest is not for consideration by this Office.

A handwritten signature in cursive script, reading "Paul G. Dembling".
Paul G. Dembling
General Counsel

The basis for denial of Mr. Carley's claim was the fact that the settlement dates for his former residence and his new residence were not within the 1-year time limitation specified by section 4.1e, Bureau of the Budget (now Office of Management and Budget) Circular No. A-56, revised June 26, 1969, in effect at the time of the transfer. It was also held that an extension of the 1-year period under an exception to the regulatory rule was not possible because Mr. Carley had not entered into the contracts for sale and purchase within the initial 1-year period as the exception required.

In a letter dated July 17, 1975, Mr. Carley now requests a reconsideration of our earlier decision based on three arguments. First, he contends that he should not be the one penalized for an error committed by the Government in the initial travel orders, especially since it was this error which caused both the delay in securing the assistance of a real estate broker and ultimately the delay in selling the old residence. Second, he asserts that, since the delay in completing the transactions was due mainly to the Government's error, the time limitation should not have run retroactively from the date he first reported to his new duty station, but should have commenced only from the date on which real estate expenses were first authorized which was some 4 months after his reporting date. Finally, he claims that the regulatory requirement for an extension of the initial 1-year period was satisfied when he entered into a "Sales Authority" and "Purchase Agreement" with realtors so that he should have been granted a year's extension to complete the transactions which in turn would have resulted in his being reimbursed for the real estate expenses.

At the outset, it should be noted that we have repeatedly held that the regulations providing for reimbursement of residence transaction and miscellaneous expenses are mandatory and cannot be waived at the agency's discretion. See 55 Comp. Gen. 613 (1976) and cases cited. Consequently, the applicable regulations entitled Mr. Carley to reimbursement for the above-mentioned expenses, regardless of the Government's error in the original travel orders, so long as the various regulatory requirements were also met.

The rule is also well settled that in the absence of a specific statutory provision, the Government is not responsible for the malfeasance, misfeasance, negligence or omissions of duty of its

B-181627

officers or employees. German Bank v. United States, 148 U.S. 573, 579 (1893); Robertson v. Sichel, 127 U.S. 507, 515 (1888); 22 Comp. Gen. 221 (1942); 19 id. 503 (1939). Thus, Mr. Carley is not relieved of the requirements imposed by section 4.1e of Circular No. A-56 solely because an officer or employee of the Government erroneously prepared his travel orders.

Moreover, in interpreting the requirements of section 4.1e of Circular No. A-56, we have held that reimbursement may only be authorized if settlement takes place within 1 year following the date on which an employee reports for duty at his new duty station unless an extension has been granted. 47 Comp. Gen. 753 (1968); B-185188, December 30, 1975. In addition, we have held that the subsequent amendment of travel orders authorizing reimbursement of real estate expenses may not be regarded as extending the time limitation within which the residence transactions must take place. 55 Comp. Gen. 613, supra. Therefore, the time limitation in the instant case began to run on the date on which Mr. Carley reported for duty at Eglin Air Force Base, and the subsequent amendment of his travel orders 4 months later did not in anyway extend this limitation.

The only way the time limitation may be extended in Mr. Carley's case is if his particular situation falls within the exception provided in section 4.1e of Circular No. A-56 which allows up to a 1-year's extension if the sale and purchase contracts have been entered into during the initial 1-year period. In our earlier decision, we held that there was no indication that Mr. Carley had entered into these contracts, but now he argues that his "Sales Authority" and "Sales Agreement" with realtors satisfies this requirement. However, we have held in the past that the placing of one's residence on the market or the signing of a contract with a realtor is not sufficient justification for extension of the settlement time. B-177323, February 2, 1973; B-169699, May 19, 1970.

Accordingly, our decision, B-181627, of January 24, 1975, is hereby affirmed.

R.F. KELLER

Acting Comptroller General
of the United States