

DOCUMENT RESUME

02666 - [A1672671]

[Late Observance of the Untimeliness of Protest]. B-187349. June 8, 1977. 3 pp.

Decision re: Berz Ambulance Service, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: LaSalle Ambulance Service, Inc.;
Veterans Administration: VA Hospital, Hines, IL.
Authority: 53 Comp. Gen. 36. 55 Comp. Gen. 1051. 56 Comp. Gen. 107. 4 C.F.R. 20.2(c). B-187920 (1977). B-187964 (1977). B-184384 (1975). B-187958 (1976). B-182318 (1975).

A late protest was filed against the award of an ambulance service contract, alleging improper procedures. Though the protest's untimeliness was not observed until after it was being prepared for a decision, to consider it could undermine the Bid Protest Procedures. The protest was not considered on the merits. (QM)

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DECISION



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

FILE: B-187349

DATE: June 8, 1977

MATTER OF: Berz Ambulance Service, Inc.

DIGEST:

1. Since award for ambulance service was made on July 16, 1976, and notification of award to protester bears same date, protest filed on September 1, 1976, that contractor did not have equipment necessary to perform at time of bid opening, that contracting officer improperly permitted contractor to add vehicle to equipment list subsequent to bid opening and that contracting officer made award prior to receiving certificate of insurance in violation of IFB condition requiring bidder to show that specific standard of liability was met, is untimely.
2. Issues considered in previous decisions are not "significant" within meaning of Bid Protest Procedures which permit consideration of protest notwithstanding protester's untimeliness when significant issue is raised.
3. Although untimeliness of protest was not observed until after comments had been received from protester on agency reports and protest was being prepared for decision, it would be inappropriate to consider on merits untimely protest, since effect of ignoring untimeliness could be to undermine Bid Protest Procedures and might result in affirmation of protest which was not proper for consideration in first place.

Berz Ambulance Service, Inc. (Berz), protested the award of an ambulance service contract to LaSalle Ambulance Service, Inc. (LaSalle), under invitation for bids (IFB) No. 578-38-76 issued by the Veterans Administration Hospital, Hines, Illinois.

B-187349

Although the contract was awarded to LaSalle on July 16, 1976, and a notice of award of the same date was issued to Berr, a notice of protest, dated August 28, 1976, was not filed with our Office by Berz until September 1, 1976. The basis of the protest was (1) that Berz had observed on May 13, 1976, the day after bid opening, that LaSalle did not have the equipment necessary to perform the contract, (2) that the contracting officer improperly permitted LaSalle to add vehicles to its equipment list subsequent to bid opening and prior to award, and (3) that the contracting officer made award to LaSalle prior to receiving certificates of insurance on each vehicle in violation of a condition of the IFB which required the bidder to show that it met specific standards of liability.

Since the contract was awarded on July 16, 1976, and notification of award to Berz bears the same date, the Berz protest filed September 1, 1976, was untimely. F. J. Roderick & Son, Inc., B-187920, January 13, 1977, 77-1 CPD 28. Moreover, the protest does not raise issues significant to procurement practices or procedures that would permit consideration under the Bid Protest Procedures, 4 C.F.R. § 20.2(c) (1976). The first two issues raised by the protest have been considered in City Ambulance of Alabama, Inc., B-187964, January 13, 1977, 77-1 CPD 29; Veteran's Administration - Request for Advance Decision, B-184384, July 29, 1975, 75-2 CPD 63; and 53 Comp. Gen. 36 (1973). The third issue related to definitive responsibility criteria, the subject of Houghton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294. Where the merits of a protest involve issues which have been considered in previous decisions, the issues are not "significant" within the meaning of 4 C.F.R. § 20.2(c). D. A. Cruciani and Frank A. Agnone, B-187958, December 21, 1976, 76-2 CPD 518.

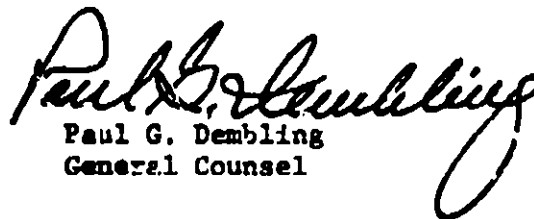
The untimeliness of the protest was not observed until after comments had been received from the protester on the agency reports and the protest was being prepared for decision. Nevertheless, this does not provide a basis for our Office to issue a decision on the merits. As we stated in Del Norte Technology, Inc., B-182318, January 27, 1975, 75-1 CPD 53:

"While our bid protest forum is designed to afford aggrieved bidders and other interested parties the opportunity to challenge alleged irregularities by procuring agencies in awarding contracts, we require the protests to be filed promptly in order to insure that the Government's procurement process is not burdened by untimely protests. * * *"

B-187349

To this end we have refused to consider untimely protests. Further, even where a protest has contained a "significant" issue which we have considered, we have refused to provide a remedy where the protest was filed untimely. Michael O'Connor, Inc., 56 Comp. Gen. 107 (1976), 76-2 CPD 456. Therefore, it would be inappropriate for our Office to consider on the merits the untimely protest in this case, since the effect of ignoring the untimeliness could be to undermine the Bid Protest Procedure and might result in the affirmation of a protest which was not for consideration in the first place.

It is regrettable that the untimeliness of the protest did not become apparent until after the agency's report was received. However, in the circumstances, we do not believe that it would be appropriate to consider it on the merits. Accordingly, we decline to consider the issues in controversy and are closing our file without further action.


Paul G. Dembling
General Counsel