

PLCG

DECISION



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

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FILE: B-194491

DATE: April 18, 1979

MATTER OF: Singleton Enterprises

[Protest Filed 8 Months After Initial Protest]

DIGEST:

Where protest was filed with GAO 8 months after initial protest was filed with contracting agency, protest is untimely since agency's active support of continued contract performance constitutes adverse agency action. Protester is charged with notification of this adverse agency action when protester has reason to know that agency has permitted contract to be substantially performed. Since contract has been performed to point where GAO would be unable to provide any meaningful relief, protest will not be considered.

Singleton Enterprises (Singleton) protests the award of a contract by the Department of the Army to the second low bidder under solicitation No. DABT02-78-B-0140. The procurement is for the renovation of bathrooms in family housing at Fort McClellan, Alabama.

Singleton contends that on July 28, 1978, it was informally advised that award had been made on July 19, 1978, to the second low bidder. (We have been informed by the Army that award had been made on July 24, 1978.) Apparently, award was not made to Singleton because of its alleged refusal to grant the Government a 30-day extension in which to accept Singleton's bid. At that time, the Army informed Singleton that an award notice had been mailed to it on July 19, 1978. Singleton contends that not only was there no refusal to grant the Government the 30-day extension, it also did not receive the notice of award until March 22, 1979.

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By letter dated July 28, 1978, Singleton initially filed a protest with the contracting officer. In addition to the original protest letter, Singleton contacted the contracting agency by nine telephone inquiries and four letters. Singleton contends that the contracting officer has "repeatedly and willfully refused" to respond to the protest until Singleton's receipt, on March 22, 1979, of the contracting officer's March 20, 1979, letter. Singleton filed a subsequent protest with our Office on March 30, 1979.

Singleton contends that it submitted the lowest responsive bid and, therefore, in accordance with paragraph 10 of Standard Form 22, "Instructions to Bidders," award should have been made to it as the most advantageous bid, price and other factors considered.

Section 20.2(a) of our Bid Protest Procedures (Procedures), 4 C.F.R. part 20 (1978), provides that a protest timely filed initially with the contracting agency must be filed with our Office within 10 working days of the "formal notification of or actual or constructive knowledge of initial adverse agency action * * *" for it to be considered on the merits by our Office. We have held that the contracting agency's acquiescence in and active support of continued and substantial contract performance may constitute adverse agency action; and a protester will be charged with notification of this adverse action when it has reason to know that the agency has permitted the contract to be substantially performed or completed. Rotair Industries, B-188668, May 11, 1977, 77-1 CPD 338.

Singleton's protest to our Office 8 months after filing its initial protest with the contracting agency is not timely under our Procedures. Even though Singleton continued to contact the agency regarding its protest, Singleton should have protested to our Office promptly when its inquiries were ignored and contract performance was proceeding to a point where we would be unable to grant any meaningful relief.

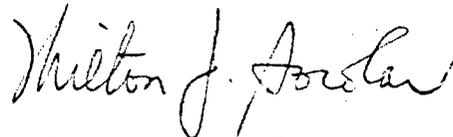
Section 20.2(a) of our Procedures provide a means by which "protests may be expeditiously resolved at

a stage when some effective remedial action may be taken on meritorious protests." The intent of the provision is to secure the resolution of the protest when some meaningful relief may be offered, not, as we have been informed in this case, when substantial work has been done (completion date for the contract is scheduled for May 20, 1979, less than 2 months after the protest was filed with GAO). Rotair Industries, supra.

Singleton further contends that the contracting officer's actions raise "issues which are significant to procurement practices or procedures" concerning the manner in which contracts are awarded and the time allowed for bid acceptance.

Section 20.2(c) of our Procedures does permit, among other things, consideration of untimely protests where issues significant to procurement practices are raised. However, the significant issue exception is limited to matters which are of widespread interest to the procurement community (a principle of broad application which has not been considered before) and is invoked sparingly so that timeliness standards do not become meaningless. See Biltwell Development Company of San Francisco--Reconsideration, B-193827, March 12, 1979. We find nothing in the present case to warrant invoking this exception.

Therefore, Singleton's protest is dismissed as untimely.



Milton J. Socolar
General Counsel