

DECISION



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

PK211

10,422

FILE: B-193516

DATE: June 8, 1979

MATTER OF: Lanier Business Products, Inc.

[Protest of Sole-Source Award]

DIGEST:

Protest filed with GAO more than 10 working days after protester was orally advised that issuance of order to competitor would not be canceled is untimely under Bid Protest Procedures.

Lanier Business Products, Inc. (Lanier) protests the issuance of an order to Philips Business Systems (Philips) for the rental of dictating equipment by the Air Force Cryptologic Depot (Air Force), Kelly Air Force Base, Texas. The order, issued on October 20, 1978, is to be effective until September 30, 1979.

Lanier objects to the sole-source award to Philips, maintaining that it also could offer the desired equipment. Further, Lanier alleges that the price of its domestically manufactured equipment would be lower than the evaluated price of Philips' foreign made equipment if the Buy America Act differential were applied to Philips' offer.

The Air Force considers the protest to be untimely. We agree and are dismissing the protest for the reasons stated below.

The protester's submissions to our Office indicate that on October 25, 1978, Lanier representatives met with the contracting officer and objected to the Air Force's failure to consider Lanier's equipment and to apply the Buy American Act differential in the evaluation of Philips' offer. At that time, Lanier indicates the contracting officer stated he would consider "canceling" the order after review of the matter with the agency's Chief of Procurement. On the following day, October 26, Lanier indicates the contracting officer informed the firm that the "award was going to Philips."

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On October 26, Lanier states it orally protested the agency's action. Five days later, on October 31, Lanier indicates the contracting officer told it that the Air Force position was unchanged and that award "was going to be made" to Philips. While Lanier continued to discuss the matter with the Air Force, that agency refused to change its position.

In the agency's view, Lanier was aware of the basis of its protest on October 26, when the Air Force notified the firm that the award to Philips would not be canceled, even though Lanier had alleged on the day before that its equipment was technically suitable to the agency's requirements and the Buy American Act was improperly applied. Citing our Bid Protest Procedures which state that a protest to GAO must be received not later than 10 days after the basis for protest is known (4 C.F.R. § 20.2(b)(2) (1978)), the Air Force maintains the protest is untimely because it was not filed in our Office until November 17.

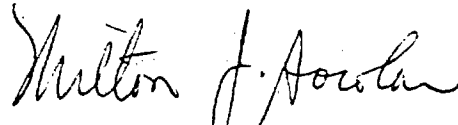
Lanier, on the other hand, views the protest as timely. Lanier contends that it filed an oral protest with the Air Force on October 26, and on later dates, and that the timeliness question should be governed by the part of our procedures which provides that where a protest is filed with the contracting agency, any subsequent protest to our Office will be timely if filed "within 10 days of formal notification or of actual or constructive knowledge of initial adverse agency action," 4 C.F.R. § 20.2(a)(1978). Lanier believes that its first notice of adverse agency action was on November 8, 1978, the date, it contends, Lanier was first aware an order had been awarded to Philips. In any case, Lanier feels its protest raises significant issues which should be resolved even if its protest was not timely filed. Finally, Lanier notes that the Air Force did not submit its report on the protest within 25 working days of our request for a report, and additionally protests "this delaying tactic."

The protest is untimely and will not be considered. It is clear from the protester's submissions that it knew the basis of its protest on October 25. Even

if we assume the validity of the oral protest to the contracting agency (the contracting agency indicates while Lanier was unhappy with the procurement action and said it might protest, the agency knows of no protest other than the one filed here), any subsequent protest to our Office should have been filed within 10 working days of notice of initial adverse agency action. The agency's notice to Lanier on October 26, 1978, and again on October 31, 1978, that award would be made to Philips was clearly "initial adverse agency action." As we have held, adverse action is any action which is prejudicial to the protester's position and need not be formal notice of an actual award. See Sono-Tek Corporation, 58 Comp. Gen. 26 (1978), 78-2 CPD 290. Since Lanier failed to file a protest with our Office within 10 working days of October 31, the protest is untimely. Jones & Guerrero Co., Incorporated, B-192328, October 23, 1978, 78-2 CPD 296.

The matters involved in this protest do not raise significant issues which should be considered under the exception to our timeliness rules cited by Lanier. See 4 C.F.R. § 20.2(c)(1978). The significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. General Automatic Corporation, B-190216, January 5, 1978, 78-1 CPD 8.

It is true, as Lanier alleges, that the Air Force response to our request for report on the protest took 37 working days, rather than the 25 working days generally anticipated by our procedures for most reports. 4 C.F.R. § 20.3(c)(1978). This, however, has no effect on the timeliness of Lanier's protest. In fact, it was the protester's submissions, not the agency report, which established the untimeliness of the protest.



Milton J. Socolar
General Counsel