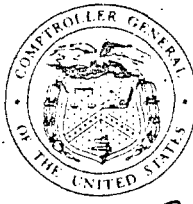


11,126 Proc I



**DECISION**

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

*[Timeliness of Protest sent to Wrong Agency]*

FILE: B-194399

DATE: August 13, 1979

MATTER OF: 3M Business Products Sales Inc.

DIGEST:

*DLG 01989*

1. Request for verification of information which forms basis of protest cannot toll timeliness requirements under Bid Protest Procedures.
2. Fact that protest is sent to wrong agency does not toll timeliness requirements of Bid Protest Procedures.

3M Business Products Sales, Inc. (3M), has protested the leasing of 59 facsimile units by the Agricultural Stabilization and Conservation Service (ASCS) of the Department of Agriculture. On October 18, 1978, ASCS renewed the lease for 8 units from Rapicom, Inc. (Rapicom), and on January 3, 1979, placed an order with Rapicom for the lease of an additional 51 units. Since we agree with the position taken by the contracting officer that 3M was untimely in filing its protest with us, we will not reach the merits of the protest.

*ASC 514*

On February 28, 1979, 3M wrote to the General Services Administration (GSA) because it believed that ASCS, in leasing the units, had exceeded the GSA maximum order limitation (MOL) and had disregarded the Buy American Act, 41 U.S.C. § 10a (1976). It requested GSA to verify the facts before it presented the case to the 3M legal department and our Office. GSA did not reply. In a letter of March 15, 1979, filed with our Office on March 20, 1979, 3M formally protested ASCS's procurement on three grounds:

1. The procurement exceeded the GSA MOL;
2. ASCS disregarded the Buy American Act; and

~~006149~~

*Procurement protests  
leases  
violating policies  
procurement - protests  
Buy American*

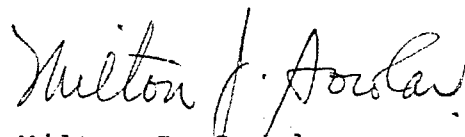
3. ASCS did not investigate other system approaches.

3M's letter of February 28 to GSA appears to be merely a request for verification of information and not a protest. Based on the same information, 3M filed its protest to our Office on March 20. While, at that time, 3M complained for the first time that ASCS did not investigate other system approaches, that is based upon the same information as is contained in the February 28 letter to GSA.

Protests other than those related to improprieties in solicitation must be filed with either the contracting agency or our Office "not later than 10 [working] days after the basis for protest is known or should have been known." 4 C.F.R. § 20.2(b)(2) (1979). Assuming that February 28 was the first day that 3M had reason to know the basis which forms the grounds of its protest, its letter to us must be considered untimely, since we did not receive it until March 20.

3M's request for verification cannot toll the filing requirements of our Bid Protest Procedures. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979; Singer Company, B-186547, December 14, 1976, 76-2 CPD 481; International Computaprint Corporation, B-186948, August 27, 1976, 76-2 CPD 200. If we consider the February 28 letter a protest, 3M's letter to us is still untimely, since the first letter was sent to the wrong agency. The protester is encouraged to first contact the contracting agency before protesting to our Office. 4 C.F.R. § 20.2(a) (1979). It is true that GSA did award Rapicom a Federal Supply Schedule (FSS) contract from which ASCS obtained the units. However, 3M's protest is not against GSA for awarding Rapicom an FSS contract, but against ASCS ordering from Rapicom. Assuming the February 28 letter was a protest, it should have gone to either ASCS or our Office, not to GSA. 4 C.F.R. § 20.2(a) and (b) (1979). The fact that it was sent to the wrong agency does not toll the timeliness requirements. See Maryland T Corporation, B-192247, July 19, 1978, 78-2 CPD 52.

Accordingly, the protest is dismissed.

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the printed name and title.

Milton J. Socolar  
General Counsel