

Mr. Lieberman

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**DECISION**



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

FILE: B-201202

DATE: January 23, 1981

MATTER OF: The Little Susitna Company

*DL607912*

*[Untimely Protest of Navy Contract Award]*

**DIGEST:**

Protest filed with GAO more than ten days after receipt of initial adverse agency action is untimely under our Bid Protest Procedures and not for consideration on merits.

The Little Susitna Company (Little Susitna) protests the award by the Navy of a contract for architectural and engineering (A-E) services under request for proposals (RFP) No. N62472-80-C-9384. The contract is for the preparation of A-E plans and specifications for repairs to a number of housing units at the Naval Station, Adak, Alaska.

Little Susitna alleges, in substance, that it is qualified to perform the work in question, that it is a minority-owned firm, and that the Navy failed to consider all of the selection criteria which appeared in the notice of the procurement published in the April 18, 1980, edition of the Commerce Business Daily (CBD). However, the protest is not for consideration on the merits since, as indicated below, it was not timely filed with our Office.

Because the contract in question was for A-E services in connection with a construction contract, the Navy utilized Brooks Bill procedures, 40 U.S.C. §§ 541-544 (1976), as prescribed in Defense Acquisition Regulation §§ 18-401, 402 (1976 ed.). Of the 22 firms which responded to the CBD announcement, six, including Little Susitna, were selected by a preselection board for further review. A selection board interviewed the six firms and recommended three firms for approval for contract negotiations, which list did not include Little Susitna. By letter dated August 22, 1980, the Navy advised Little Susitna that it had not been selected for the project and that negotiations were being conducted with Seifert and Forbes, P.S.

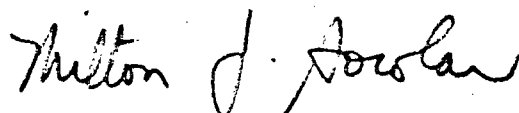
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By letters dated August 28, 1980, Little Susitna filed a protest and a request for a "formal hearing" with the Navy. By letter dated October 6, 1980, the Navy denied Little Susitna's protest, stating that: "Having reviewed this matter in depth [it] can find no basis for overturning the decision of the Selection Board." Little Susitna indicates that it also received a notification from the Navy on November 4, 1980, that "the contract had been signed with the Washington firm (Seifert & Forbes)." Little Susitna protested to GAO by telegram filed (received) in our Office on November 13, 1980.

Our Bid Protest Procedures provide that when a protest is initially filed with the contracting agency, a subsequent protest to our Office, to be timely, must be filed within 10 working days of receipt of the initial adverse agency action. 4 CFR § 20.2(a) (1980). Thus, Little Susitna's protest, which was filed with GAO more than a month after it received the Navy's letter denying its initial protest, is untimely and not for consideration on the merits. American Marine Decking Supplies, Inc., B-197987, September 22, 1980, 80-2 CPD 217.

We note that Little Susitna contends that it did not receive any notice of adverse agency action until November 4, 1980, when it was advised of the award. The protester asserts that "all other letters received by this office have failed to mention the contract, and only mentioned that our request for hearing was denied." However, initial adverse agency action is not the notification of award to another firm, where the protest to the agency was previously denied. Moreover, the record contradicts Little Susitna's allegation that only its request for a hearing was denied. Little Susitna's August 28, 1980, letter to the Navy stated "please consider this letter a formal protest," and the Navy's reply of October 6, 1980, above-quoted, specifically denied this protest.

Accordingly, the protest is dismissed as untimely.



Milton J. Socolar  
General Counsel