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DECISION



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

FILE: B-202404

DATE: March 30, 1981

MATTER OF: M & M Welding & Fabricators, Inc.

DIGEST:

1. Protest filed with GAO more than 10 days after protester receives notification of adverse agency action (award to another) on protest initially filed with agency is dismissed as untimely.
2. GAO is not estopped from dismissing protest as untimely by agency's postaward advice to protester that determination on preaward protest to agency would be made soon thereafter.

M & M Welding and Fabricators, Inc. (M & M), protests the award of a contract to M & S Mechanical Corporation (M & S) for replacement of condensate lines under invitation for bids (IFB) No. 3-B-SEA-81 issued by the Department of Agriculture (Agriculture). M & M protests that M & S did not meet the IFB's definitive responsibility criteria concerning American Society of Mechanical Engineers (ASME) certification and ASME certification stamp for pressure pipe welding. M & M argues that any affirmative determination of M & S's responsibility could not have been supported by objective evidence of compliance. See M & M Welding and Fabricators, Inc., B-187573, January 17, 1977, 77-1 CPD 35.

On January 26, 1981, M & M protested to Agriculture. On February 4, 1981, Agriculture notified M & M that it was awarding the contract to M & S. M & M advises that upon receipt of the notice of award it telephoned Agriculture and was advised "that a determination on M & M's protest letter would be made soon thereafter." M & M waited for Agriculture's February 24, 1981, decision and filed with GAO on March 6, 1981, following Agriculture's denial.

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[Contract Award Protest]

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Our Bid Protest Procedures require that protests initially filed with the contracting agency will only be considered by our Office if they are filed within 10 working days of the protester's learning of initial adverse agency action. ✓ 4 C.F.R. § 20.2(a) (1980). Agency award of a contract, notwithstanding the agency's receipt of a protest, constitutes such adverse agency action. Durant Insulated Pipe, Division of Ricwil, Inc. (Durant), ✓B-194833, January 17, 1980, 80-1 CPD 55.

In recognition of the timeliness issue involved here, M & M's counsel contends that the Government is estopped to conclude that the protest is untimely because M & M waited for a decision from Agriculture on its protest letter before engaging counsel and pursuing the protest with GAO.

Our rules impose strict time limits and are strictly construed. Durant, supra. We fail to see how M & M could view Agriculture's award to M & S as anything but an adverse determination. An affirmative determination of responsibility was a prerequisite to an award and such determination necessitated Agriculture's satisfaction that M & S had provided objective evidence of its compliance with the ASME certification and ASME certification stamp requirements. Therefore, we do not see any basis upon which our Office can be deemed to be estopped from asserting the untimeliness of M & M's protest despite Agriculture's advice to M & M that its protest would be decided soon after the award.

Protest dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel