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DECISION



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

21036

FILE: B-206394

DATE: March 8, 1982

MATTER OF: Blakeslee Arpaia Chapman, Inc. and Charles Stokes d/b/a C. Stokes Construction Company

DIGEST:

GAO dismisses a subcontract protest, as untimely filed under 4 C.F.R. § 21.2(a) (1981), because the protester filed the protest with GAO more than 10 working days after notice of the initial adverse action taken by Amtrak--the prime contractor. GAO concludes that the protester's appeal of Amtrak's determination to the Department of Transportation does not extend the time to file a subsequent protest with GAO.

Blakeslee Arpaia Chapman, Inc. and Charles Stokes d/b/a C. Stokes Construction Company (Blakeslee) protests the proposed award of a contract to Gates Construction Company (Gates) under invitation for bids (IFB) No. AM-81-KBACK2F. The IFB was issued by the National Railroad Passenger Corporation (Amtrak), a prime contractor of the Federal Railroad Administration, Department of Transportation (Transportation), for replacement of the Mystic River Bridge, Mystic, Connecticut, as part of the Northeast Corridor Improvement Project. We dismiss the protest since it is untimely filed under our Bid Protest Procedures.

Blakeslee contends that the low bid submitted by Gates is nonresponsive because: (1) Gates failed to submit a subcontracting plan, failed to name the subcontractors in its bid, and failed to describe their work and the associated estimated dollar value of the subcontracts in its bid, as required by the IFB; (2) Gates failed to acknowledge an IFB amendment; and (3) Gates failed to submit with its bid an executed schedule "B," entitled "Affirmative Action Requirements," as required by the IFB.

By letter dated November 20, 1981, or 1 week after bid opening, Blakeslee protested to Amtrak. This protest was timely filed with Amtrak under our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(2) (1981). By letter dated December 10, 1981, Amtrak denied Blakeslee's protest, stating that: (1) Gates agreed to the IFB's subcontracting goals and Gates could submit the details of the subcontracting plan after bid opening; (2) the amendment could only serve to reduce bid prices; and (3) Gates complied with the IFB's requirements regarding schedule "B" because the IFB expressly permitted schedule "B" to be executed after bid opening.

By letter dated December 14, 1981, Blakeslee protested to Transportation and by letter dated January 27, 1982 (received by Blakeslee on February 1, 1982), Transportation essentially affirmed Amtrak's determination and denied Blakeslee's protest. On February 11, 1982, Blakeslee protested here.

Blakeslee asserts that this is the type of subcontract protest which our Office will review under our decision in Optimum Systems Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Assuming that Blakeslee is correct and we would consider the merits of the protest, we would do so essentially because Amtrak is acting "for" Transportation. Blakeslee Prestress, Inc., et al., B-190778, April 17, 1978, 78-1 CPD 297. In any event, we find that the protest is untimely filed under our Bid Protest Procedures.

If a protest is filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of formal notification of initial adverse agency action. 4 C.F.R. § 21.2(a) (1981). In a subcontract protest situation similar to this one where there was an initial timely protest filed with the prime contractor, we have held that a subsequent protest to our Office must be filed here within 10 working days of notice of the initial adverse action taken by the prime contractor. See, e.g., Arrowhead Linen Service, B-194496, January 17, 1980, 80-1 CPD 54.

Further, we have held that a protester's continued pursuit of its protest with the contracting agency, despite the initial rejection of its protest, does not extend the time or obviate the necessity for filing a

protest with our Office within 10 working days of initial adverse agency action, See, e.g., BKC Incorporated, et al., B-198905, June 10, 1981, 81-1 CPD 474, and decisions cited therein. Since Amtrak was acting "for" Transportation, Amtrak and Transportation must be considered to be the same "contracting agency" for purposes of this procurement and the timeliness provisions of our Bid Protest Procedures.

Accordingly, since Blakeslee's protest to our Office was not filed here within 10 working days after it received notice of Amtrak's denial of its protest, Blakeslee's protest is untimely and will not be considered on the merits.

Protest dismissed.

Harry R. Van Cleve
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Acting General Counsel