

DECISION

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

Pl-1
AYER
119047

FILE: B-207864

DATE: July 23, 1982

MATTER OF: Gary's Disposal, Inc.

DIGEST:

1. Misaddressed mailgram protest transmitted on June 4, 1982, bearing a June 7, 1982, date stamp of unknown origin which is not received at proper office within GAO until June 25, 1982, is dismissed as untimely.
2. Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on protest to agency is dismissed as untimely.

Gary's Disposal, Inc. (Gary), protests the Air Force award of a contract to another firm under request for proposals (RFP) No. F45603-82-R-0026 on the grounds that: (1) the Air Force failed to give preference to Gary (an Indian-owned firm) and (2) Gary's price was lower than the awardee's price. We conclude that Gary's protest is untimely.

The Air Force advises that Gary filed a protest with the Air Force regarding Indian preference on April 19, 1982. This protest was denied on May 12, 1982. By letter dated May 20, 1982, the Air Force informed Gary that the contract was being awarded to another firm. Gary was also informed of the amount of the award.

Gary, on June 4, 1982, sent a protest by mailgram to GAO using an address other than that set out in our Bid Protest Procedures. 4 C.F.R. § 21.1(a) (1982). The mailgram was addressed:

"General Accounting Office, Controller Office
441 G ST Northwest
Washington DC 20548"

Gary's mailgram should have been addressed:

General Counsel,
General Accounting Office
Washington, D.C. 20548

Moreover, to expedite handling within GAO, the C.F.R. states that the above address "should include 'Attn: Bid Protest Control Unit.'"

On June 9, 1982, Gary provided, by letter, the details of its June 4, 1982, protest using the correct mailing address set out in our Procedures. We received the June 9, 1982, letter of details on June 14, 1982, before we received the June 4, 1982, mailgram of initial protest on June 25, 1982.

The question presented is whether either the mailgram protest or letter of protest details constitutes a timely protest under our Bid Protest Procedures.

Our Bid Protest Procedures require that protests be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(b)(2) (1982). They also provide that a protester has 10 working days after initial adverse agency action on a protest filed with the contracting agency to file a subsequent protest with our Office. 4 C.F.R. § 21.2(a) (1982). In both cases "filed" is defined as "receipt in the General Accounting Office." 4 C.F.R. § 21.2(b) (1982). Our Procedures specify the address which must be used on protests, 4 C.F.R. § 21.2(b) (1982), "in order to assure protesters that mail will be correctly received and routed to the office within GAO which is responsible for handling these matters." Janitorial Services Industries, B-205234, November 20, 1981, 81-2 CPD 415.

Mailgram Protest

Although our Procedures specifically warn that "protests should be transmitted or delivered in the manner which will assure the earliest receipt," an exception is allowed for the consideration of mailgram protests which are untimely filed where the protester sent the mailgram at least 3 working days before the filing deadline. 4 C.F.R. § 21.2(b)(3) (1982). This

exception is premised, however, upon the assumption that the mailgram is correctly addressed in accordance with our Procedures. Were we to allow incorrectly addressed mailgrams to qualify for this exception, we would introduce an unwarranted element of uncertainty to the procurement process which would run contrary to our policy of strictly construing our timeliness rules in order to enable the Government to proceed with the timely acquisition of required supplies and services. The instant case illustrates the need for this rule. We are unable to ascertain exactly what happened to Gary's mailgram protest between the date of its transmission (June 4, 1982) and its ultimate arrival (June 25, 1982) at the Office of General Counsel. Our only clue is a date stamp of unknown origin reading "JUN 7 1982."

However, efforts to identify the origin of the date stamp, both within offices of GAO and other Federal agencies located at 441 G St., Northwest, Washington, D.C., were unsuccessful. Since the mailgram was misaddressed, it is not for consideration under the 3-day exception mentioned above.

Although we will consider a protest as having been timely received if it can be shown by appropriate documentary evidence to have been physically present in GAO on time, see Linguistic Systems, Incorporated, 58 Comp. Gen. 403 (1979), 79-1 CPD 250, we lack any evidence concerning the actual location of Gary's mailgram until it arrived at the Office of General Counsel on June 25, 1982. Therefore, Gary's mailgram protest was untimely and will not be considered. Janitorial Services Industries, supra.

Letter of Protest Details

The only issue remaining is whether Gary's June 9, 1982, details constitute a timely protest of the issues which Gary seeks to raise. In our view, Gary's June 9, 1982, details of protest are also untimely because they were not filed within 10 working days of either initial adverse agency action on Gary's protest to the Air Force (i.e., award to another) or knowledge of the dollar value of the award. The Air Force letter of May 20, 1982, advised Gary both of the award to another and of the dollar value of the award. We did not receive Gary's June 9, 1982, details of protest until June 14, 1982,

which is 16 working days after the date of the Air Force letter of denial. Allowing 5 working days for Gary's receipt of the letter, the protest should have been filed by June 11, 1982. Consequently, Gary's protest of June 9, 1982, is untimely.

The protest is dismissed.

J. H. Barclay Jr.
for Harry R. Van Cleve
Acting General Counsel