

**DECISION**

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

112  
March  
119582

**FILE:** R-205501

**DATE:** September 28, 1982

**MATTER OF:** SAFE Export Corporation

**DIGEST:**

Protest contending protester's bid was low and agency's determination of non-responsiveness was deficient is dismissed as untimely under GAO Bid Protest Procedures since protest was not filed for more than four months after protester received GAO's decision affirming, on reconsideration, previous protest of same protester with respect to same procurement. Protester's failure to request promptly information which forms basis of its protest was unreasonable and reflects a lack of diligence.

On November 10, 1981, SAFE Export Corporation (SAFE Export) protested the award of a contract to another company by the U.S. Army Contracting Agency, Europe, under solicitation No. DAJA73-82-R-0363. This solicitation had been the subject of a prior protest, which was dismissed in part and denied in part, Security Assistance Forces & Equipment International, Inc., B-199377, March 17, 1981, 81-1 CPD 200, affirmed on reconsideration, B-199377.2, June 2, 1981, 81-1 CPD 435.

In the first decision we denied SAFE's contention that the agency should have permitted offerors to inspect the components inside the alarm systems to be serviced, prior to the submission of proposals. The agency's position was that such an inspection was unnecessary because all documentation needed for the servicing was available. The protester did not show this position to be unreasonable. We also dismissed as untimely that part of SAFE's protest based on alleged improprieties which were apparent on the face of the solicitation. In the decision upon reconsideration, we

affirmed the initial decision because SAFE alleged no errors of law and presented no persuasive evidence of factual errors except for one item of questionable validity which it should have presented during the development of the initial protest.

Although our Office sent, and SAFE Export received, copies of our March and June decisions, SAFE Export contends it never received the Army's notification of award dated June 5, 1981, and did not know until November 4, 1981 that it had submitted the low bid and allegedly should have received the award. For the reasons discussed below, we dismiss this protest as untimely under our Bid Protest Procedures, 4 C.F.R. Part 21 (1982).

Our decisions requiring a potential protester to diligently pursue whatever information is necessary to form the basis for its protest usually involve situations where the protester received a notice of award to a competitor and unreasonably delayed its efforts to acquire information about that award. See, e.g., Entron, Inc., B-202397, August 12, 1981, 81-2 CPD 128. In those cases, we have stated that while a mere notice of award is often, by itself, not a basis for protest, it is incumbent upon a protester to diligently seek whatever relevant information is needed to determine whether to protest. Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172; National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87. In the situation presented here, SAFE Export does not deny it promptly received our decision of June 2, 1981 but contends it never received the notice of award which the Army states was mailed three days after issuance of our decision. Nevertheless, we think the principles of the cases cited above should be applied here.

In our view, it was reasonable to expect the Army to take some action to fill its needs soon after the protest was resolved. SAFE Export, however, states it assumed that no funds would be available until the new fiscal year. Although it could have checked the validity of its assumption at any time, it did nothing for four months. Current information regarding the status of the procurement could have been

readily obtained by a telephone call to the procuring office with which it was thoroughly familiar. The protester's delay eliminated any possibility of an effective remedy if its protest had proven to have merit. We believe this delay was unreasonable and clearly reflects a lack of diligence in seeking the information which forms the basis of this protest.

The protest is dismissed.

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