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DECISION

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

FILE: B-208580 DATE: September 27, 1982

MATTER OF: Di-Edco Enterprises

DIGEST:

Contracting officer's denial of protest constitutes initial adverse agency action. Protest to GAO filed more than 10 working days after protester learns of contracting officer's denial is therefore untimely. Filing of informational copy of protester's agency appeal does not constitute protest to GAO.

Di-Edco Enterprises (Di-Edco) protests the rejection of its bid on project 81-101 by the Veterans Administration (VA) Medical Center in Sepulveda, California. Di-Edco's low bid was rejected for failing to comply with bid bond requirements. Di-Edco contends its bid should not have been rejected because it submitted the most significant of the two required forms. Di-Edco argues that any irregularity in its bid should be waived because its low bid is in the best interest of the Government.

We dismiss the protest because it was not timely filed with our Office.

Di-Edco protested the rejection of its bid in a July 2, 1982, protest letter to the contracting officer. On July 7, the contracting officer denied the protest on the grounds that Di-Edco did not submit the required bid bond forms and a bid bond in the proper format. Di-Edco was advised by the contracting officer that it could either appeal the denial to the Director of Supply Services, Veterans Administration Central Office, or file a protest with our Office within 10 working days. Di-Edco chose to appeal to the Director of Supply Services in a letter dated July 13.

Di-Edco filed a copy of its appeal with our Office on July 20. We did not process the filing as a protest. We instead sent Di-Edco a July 21 letter which explained that to be regarded as a protest to our Office, communications must specifically request a ruling by the

Comptroller General, Di-Edco requested our decision in an August 2 letter filed with our Office on August 6.

Under our Bid Protest Procedures, protests filed initially with the contracting agency must be filed in our Office within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1982). The VA's initial adverse action against Di-Edco was the contracting officer's July 7 denial of Di-Edco's July 2 protest. Di-Edco learned of the July 7 denial by at least July 13, the date it appealed the denial to the Director of Supply Service. Di-Edco therefore was required to file any protest of this action in our Office by July 27, 10 working days later. See Jenson Corporation, B-206692, March 22, 1982, 82-1 CPD 271.

The filing of Di-Edco's appeal to the Director of Supply Service with a copy to our Office did not constitute the filing of a viable protest with our Office. We have previously held that a letter need not contain exact words of protest to be characterized as a formal bid protest so long as it can be understood as lodging specific exceptions to the particular procurement procedure. Sea Containers, Inc., B-193086, February 28, 1979, 79-1 CPD 139; TII Systems, Inc., 56 Comp. Gen. 300 (1977), 77-1 CPD 61; Johnson Associates Inc., 53 Comp. Gen. 518 (1974), 74-1 CPD 43. However, Di-Edco's letter of appeal to the VA did not demonstrate an intent to protest to our Office. At best, it constituted notification that Di-Edco was appealing to the Director of Supply Services and might file a future protest with our Office. As such, it did not toll the running of the 10-day timeliness period for the purposes of the allegations raised here. See Anigroeg Services, Inc., B-206362.4, August 5, 1982, 82-1 CPD ___.

Di-Edco contends that the awarding of the contract despite the protest constitutes adverse action that renders its protest timely. Although we agree that the awarding of the contract in the face of a protest constitutes adverse action, it was not the VA's initial adverse action from which date timeliness must be measured. See Graphic Litho Corporation, B-190928, January 9, 1978, 78-1 CPD 18; Panoramic Studios, 52 Comp. Gen. 20 (1972).

The protest is dismissed.

Harry R. Van Cleve
Acting General Counsel