

DECISION

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

FILE: B-208675**DATE:** March 22, 1983**MATTER OF:** Federal Sales Service, Inc.**DIGEST:**

While reasonable disputes over timeliness of protest ordinarily are resolved in favor of the protester, where a reasonable interpretation of the protester's statement alleging timeliness supports the actual recollections of the agency's employees that the protester first learned of issuance of a purchase order to another party more than 10 working days before the protest was filed in GAO, protest is viewed as untimely.

Federal Sales Service, Inc. protests the issuance of purchase order No. 842-1753 for print wheels to Wang Laboratories, Inc. by the Agency for International Development (AID) on the basis that the protester has a mandatory Federal Supply Schedule contract for the items covering the period in question.

We dismiss the protest as not timely filed.

Federal's protest was filed in our Office on August 23, 1982. In this regard, while Federal's protest letter is dated August 16, it was not received here until August 23. Under our Bid Protest Procedures, the date of receipt in our Office is the date of filing. 4 C.F.R. § 21.2(b)(3) (1982).

Our Procedures require that a protest be filed not later than 10 working days after the basis for protest is known. 4 C.F.R. § 21.2(b)(2). At issue here is when the protester first learned of the basis for protest, namely, that award was made to Wang. If, as contended by Federal's president, the basis was first communicated to

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Federal's sales representative by telephone on Monday, August 9, the protest is timely, but if, as the agency contends, the sales representative was informed during a visit to the agency on Friday, August 6, it is untimely.

AID has furnished to our Office an August 16 memorandum to the file prepared by the purchasing agent, stating that Federal's sales representative telephoned her "on the week of August 6" and that the purchasing agent advised that the order had been issued to Wang. The memorandum states that the sales representative indicated she would visit the activity "one day of the week of August 6." The agent also has submitted an affidavit about a telephone conversation, in which she states that on August 6 the sales representative visited her office and was advised that the order would not be canceled. AID has furnished an August 16 memorandum prepared by another purchasing agent stating that the Federal representative also visited her on August 6, and she advised that the Wang order would not be canceled, and that the Federal sales representative then left her office "and proceeded to talk with" the other agent.

In rebuttal, Federal has submitted a statement by the sales representative that purports to establish Monday, August 9 as the date of notice. Under a heading "July 27, 1982," she describes a telephone discussion with AID's purchasing agent about Federal's entitlement to the order, but the narrative under the next heading, "August 9, 1982," begins, "Ms. McNeil [AID's purchasing agent] called me the following week regarding another order she had placed with FSS on July 27," and states that she went to the procurement office to discuss the matter. July 27 was a Tuesday, however, and the "following week" (Monday-Friday) would be August 2-6, so the references under the August 9 heading to a telephone conversation and a visit to AID, in which the sales representative was informed of the award to Wang, more reasonably relate to the week of August 2-6. This interpretation agrees with the actual recollections of AID's employees--both procurement agents specify August 6 as the date of the office visit.

The above circumstances do not form a basis for applying the rule that disputes over timeliness are resolved in the protester's favor. See Nielsen, Maxwell & Wangsgard, B-205418, April 26, 1982, 82-1 CPD 381. Here, not only do

we have considerable evidence, in the form of documents furnished by AID, that Federal learned the basis for its protest on Friday, August 6, but the statement of the protester's employee itself is equivocal as to whether the grounds were first known on Monday, August 9, or at a visit to the agency during the preceding week of August 2-6 (Monday-Friday). The sales representative's statement thus reasonably supports the actual recollections of the agency's employees.

Under the circumstances, we must conclude that Federal received notice of award to Wang on August 6. Therefore, the protest, filed here on August 23, is untimely. 4 C.F.R. § 21.2(b)(2).

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel