

DECISION



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

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FILE: B-211179

DATE: October 11, 1983

MATTER OF: Air and Pump Company

DIGEST:

1. Protest filed with GAO more than 10 working days after oral denial by the contracting agency of an oral protest is dismissed as untimely.
2. Protest against acceptance of allegedly nonconforming equipment under contract involves a matter of contract administration not reviewable by GAO.

Air and Pump Company (A&PCo.) protests award of a contract by the Department of the Navy (Navy) to Corpus Christi Equipment Company (CCE) under request for proposals (RFP) No. N00216-83-R-0001 for one 50-horsepower and one 75-horsepower air compressor assembly for the Corpus Christi Naval Air Station. A&PCo. contends that the contract was awarded for commodities which vary substantially from the specifications in the RFP.

We dismiss the protest.

On January 26, 1983, a representative of A&PCo. met with the contracting officer contending that the compressors offered by CCE were not in accordance with the specifications. A&PCo. was advised by the Navy supply officer that he did not find sufficient grounds in the allegations of A&PCo. to withhold award to CCE. A&PCo. alleges that it was informed by the Navy that the Navy would not accept equipment which did not meet specifications.

The equipment was delivered on March 2, 1983, and was returned to CCE for correction of three variations from the specifications. Other variations from the specifications were determined to be minor. By telephone on March 7, 1983, A&PCo. was notified by the Navy that the variations of the delivered equipment from the specifications were not "glaring exceptions" as alleged by A&PCo. in its letter of March 2, 1983, and three minor variations would be corrected by CCE. The equipment was finally accepted by the Navy on March 17, 1983, and A&PCo. filed a protest with our Office on March 21, 1983.

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The Navy contends that the protest is untimely. The Navy alleges, and A&PCo. agrees, that A&PCo. filed an oral protest with the agency on January 26, 1983. The Navy also alleges that award of the contract on the same day constituted the initial adverse agency action. Navy contends, therefore, that the protest, not posted until March 18, 1983, and not received in our Office until March 21, 1983, is untimely under section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1983), which provides that if a protest is initially filed with the contracting agency, any subsequent protest to be considered must be filed in our Office within 10 working days of the initial adverse agency action.

A&PCo. agrees that it knew the basis of its protest on January 26, 1983, and that it protested to the agency on that date. A&PCo. contends, however, that because the Navy stated that it would not accept equipment which did not comply with the specifications, the initial adverse agency action was the acceptance of the equipment on March 17, 1983, although the equipment still varied from the specifications.

The protest to the Navy on January 26, 1983, and to our Office on March 21, 1983, is against award to CCE whose offer allegedly did not comply with all of the specifications. The oral notification by the supply officer that he did not find sufficient grounds in the allegation of A&PCo. to withhold award to CCE constituted denial of the protest by the agency and the initial adverse agency action of which A&PCo. had actual knowledge. See Compucorp, B-211889, June 10, 1983, 83-1 CPD 644. The protest filed with our Office more than 10 days later is untimely and will not be considered. 4 C.F.R. § 21.2(a).

The acceptance of the equipment under the contract is a matter of contract administration for resolution by the contracting agency and will not be considered by our Office. Gulf Systems, Inc., B-210080, January 6, 1983, 83-1 CPD 12.

Harry R. Van Cleve
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Acting General Counsel