

DECISION



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

FILE: B-221954 **DATE:** February 27, 1986
MATTER OF: Langfur Construction Corp.

DIGEST:

1. Protest alleging that agency should not have rejected a bid as nonresponsive is untimely when it is filed with the General Accounting Office more than 10 days after the protester receives notice of adverse action on an agency-level protest.
2. Protester's submission to the General Accounting Office of an information copy of a mailgram sent to the contracting officer is not sufficient to constitute a timely protest to GAO when the mailgram neither sets forth any reasons why the protester believes rejection of its bid was improper nor requests a ruling by the Comptroller General.

Langfur Construction Corp. protests the award of a contract to Holtze Brothers at a price \$121,000 more than Langfur offered in response to invitation for bids (IFB) No. F05600-85-B0083, issued July 26, 1985 by the Base Contracts Division, Lowry Air Force Base, Colorado. The solicitation covered certain construction work which was identified as "Mod Dorms Project Phase II." The Air Force rejected Langfur's bid as nonresponsive because it offered a 60-day bid acceptance period, rather than the required 90 days.

We dismiss the protest as untimely.

The record indicates that Langfur protested to the Air Force by letter dated October 17 and again by mailgram dated December 13. In the mailgram, Langfur argued that an award to the only other bidder was not competitive or in the best interest of the Air Force. Langfur sent an information copy of this mailgram to our Office.

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The Air Force awarded the contract on December 12 and denied the agency-level protest on December 20, when the contracting officer advised Langfur by letter that any waiver of the 90-day bid acceptance period would be prejudicial to other bidders and that the awardee's price was believed fair and reasonable, based on six bids received for Phase I of the project. Langfur formally protested to our Office on February 4, 1986.

Our Bid Protest Regulations provide that if an initial protest has been timely filed with the contracting agency, we will consider a subsequent protest to this Office if it is filed within 10 days after formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1985). Here, Langfur's 10 days began to run when it received the Air Force letter of December 20. Since Langfur did not protest to our Office until February 4, its protest is untimely, and we will not consider it. See Sterling Millwrights, Inc., B-219242, July 22, 1985, 85-2 CPD ¶ 69. The information copy of the mailgram neither set forth any reasons why Langfur believed rejection of its bid was improper nor requested a ruling by the Comptroller General; it therefore was not sufficient to constitute a timely protest to our Office. See 4 C.F.R. § 21.1(b).

We dismiss the protest.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel