

DECISION

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

FILE:

B-221983.2

DATE: May 2, 1986**MATTER OF:**

Franklin Lumber, Inc.

DIGEST:

GAO will not waive regulatory requirement that protester provide contracting officer with a copy of its protest within 1 day of filing where the agency otherwise did not have specific knowledge concerning the protest's details so that it would be able to file a responsive report within the statutorily-required timeframe.

Franklin Lumber, Inc., requests reconsideration of our March 4, 1986 dismissal of its protest challenging the award of a contract under invitation for bid (IFB) No. DART56-85-B-0085. The IFB was issued by the United States Army Engineer Center, Fort Belvoir, Virginia. We affirm our dismissal.

Background

Franklin first challenged this award by filing a protest with the Army by letter of January 17, 1986. The protest consisted of a single sentence alleging that the apparent low bidder had submitted an unbalanced bid. The Army denied the protest by letter of January 29. In denying Franklin's protest, the Army stated that its review of the low bid indicated that it was not materially unbalanced.

On February 7, Franklin filed a protest with our Office, adding details to its earlier complaint to the Army, and identifying several line items on which it alleged the low bid was unbalanced. Franklin failed to provide the Army with a copy of this protest, so that, on March 4, we dismissed the matter. Our action was based on section 21.1 of our Bid Protest Regulations, 4 C.F.R. part 21 (1985), which requires the protester to provide the contracting officer with a copy of the protest no later than 1 day after the protest is filed with our Office.

In requesting reconsideration, Franklin suggests that we waive the requirements of section 21.1, arguing that, by virtue of its January 17 protest, the Army had actual knowledge concerning the basis of the protest filed in our Office.

Discussion

The regulatory requirement that the contracting officer receive a copy of the protest 1 day after filing stems from the requirement imposed on the procuring activity by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3553(b)(2)(A) (West Supp. 1985), that the activity furnish our Office with a report within 25 days. This requirement affects, in turn, the ability of our Office to meet the 90-day deadline established in CICA for issuing our decision. Due to the importance of the statutory timeframes, waivers of section 21.1 are considered exceptional and are granted sparingly. See Julie Research Laboratories, Inc., B-219866.2; B-219867.2, Sept. 18, 1985, 85-2 C.P.D. ¶ 302; Sabin Metal Corp.--Reconsideration, B-219171.2, July 24, 1985, 85-2 C.P.D. ¶ 79.

In requesting reconsideration of our dismissal, Franklin relies on previous decisions of this Office where we chose to waive the requirements of section 21.1. See Colt Industries, B-218834.2, Sept. 11, 1985, 85-2 C.P.D. ¶ 284; Hewitt, Inc., B-219001, Aug. 20, 1985, 85-2 C.P.D. ¶ 200; Florida Precision Systems, Inc.--Request for Reconsideration, B-219448.2, Aug. 12, 1985, 85-2 C.P.D. ¶ 160. In those cases, however, we elected to consider the merits of the protests despite the lack of strict compliance with section 21.1 only because we found that the contracting officers had precise knowledge concerning the bases of the protests and were able to file timely reports with our Office. In each case, the contracting officer received an exact copy of the protest filed in our Office--albeit from a source other than the protester--within sufficient time to prepare and submit the agency's report to our Office within 25 days.

The report that CICA requires an agency to file must contain a detailed response to the allegations raised by the protester. See 31 U.S.C.A. § 3553(b)(2). In a case like Franklin's, possession by the agency of a copy of the protest is essential to its ability to accomplish this task. As noted above, Franklin's protest to the Army stated only that the apparent low bid was unbalanced. In contrast, Franklin's appeal to our Office included calculations on 5 of the 99 line items purporting to prove unbalancing, and alleged that numerous other items were unbalanced as well. Thus, notwithstanding the earlier protest, the contracting officer had no knowledge of the specific charges to which he needed to respond. He also could not know whether Franklin

had asserted new arguments or points of law or had raised entirely new protest issues. In sum, we cannot say that the agency could have filed a responsive report with our Office within the statutory timeframe, without having been provided a copy of Franklin's February 7 protest.

In light of Franklin's failure to comply with our Bid Protest Regulations, we will not consider its protest. The dismissal is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel