

Cooper



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dreis & Krump Manufacturing Co.

File: B-225406

Date: October 23, 1986

DIGEST

Protester's oral complaint to contracting officer, that product offered by awardee did not conform to the specifications, did not constitute a timely agency protest since oral protests are no longer provided for under the Federal Acquisition Regulation. Therefore, protest to the General Accounting Office filed more than 10 working days after basis for protest was known is dismissed as untimely.

DECISION

Dreis & Krump Manufacturing Co. protests the award of a contract to Lynch Machinery Co. under request for proposals (RFP) No. N00600-86-R-3851, issued by the Naval Supply Systems Command for press brakes. We dismiss the protest as untimely.

Dreis complains that Lynch offered hydraulic press brakes, rather than the mechanical press brakes called for by the solicitation. After receiving notice of award and of the product Lynch had offered on September 16, the firm orally indicated to the Navy its dissatisfaction with the award on September 18, 23, 24, 26 and October 2. In telephone conversations of September 23 and 24, the Navy informed Dreis that it considered the award to be valid. Dreis never filed a written protest with the Navy. In its October 20 protest to our Office Dreis indicates that, in its September 24 conversation, the contracting officer agreed to review the award and Dreis agreed to wait for the Navy's reply before filing a formal protest. However, Dreis asserts, the Navy never replied or returned its telephone calls.

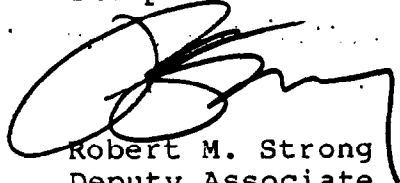
Our Bid Protest Regulations require that protests like Dreis' be filed not later than 10 days after the basis of protest is known or, if a timely protest has been filed initially with the contracting agency, that any subsequent protest to our Office must be filed within 10 working days after the firm

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knows of initial adverse action at the agency level. 4 C.F.R. § 21.2(a)(2) and (3) (1986). Dreis' formal protest to our Office was not filed until 23 working days after the basis for protest was known, and is therefore untimely. Although we recognize that Dreis indicated its dissatisfaction to the agency shortly after the award, we cannot view Dreis' oral discussions with the Navy as constituting a protest at that level since oral protests are no longer provided for under applicable regulations. See Federal Acquisition Regulation, 48 C.F.R. § 33.101 (1985); K-II Construction, Inc., B221661, Mar. 18, 1986, 65 Comp. Gen. ____ (1986), 86-1 C.P.D. ¶ 270.

Dreis' suggestion that its protest filing was delayed unfairly by the contracting officer does not excuse the untimeliness of the complaint. Our Regulations have been published in the Federal Register, and protesters therefore are charged with constructive knowledge of our filing rules. Shannon County Gas--Reconsideration, 64 Comp. Gen. 450 (1985), 85-1 C.P.D. ¶ 384.

The protest is dismissed.



Robert M. Strong
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