



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Sound Business Systems, Inc. -- Reconsideration  
File: B-228037.2  
Date: September 24, 1987

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### DIGEST

Protest is untimely where protester first raises specific basis of protest in a request for reconsideration that was filed more than 3 weeks after initial adverse agency action.

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### DECISION

Sound Business Systems, Inc. (SBS) requests reconsideration of our dismissal of its protest of the award of a contract for filing systems to White Power Files under request for quotations (RFQ) No. DACW67-87-Q-0057, issued by the U.S. Department of the Army, Corps of Engineers. We dismissed the protest because SBS failed to provide a detailed statement of the legal and factual grounds of its protest. We affirm the decision to dismiss the protest.

In its original protest to our Office, SBS included a copy of its quotation and speculative figures regarding the quotation submitted by White. While SBS communicated its dissatisfaction with the award procedures and result (i.e., that White was selected over SBS), SBS did not indicate any basis for its protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1987), require that each protest set forth a detailed statement of the legal and factual grounds of protest. Because SBS failed to comply with these requirements, its protest was dismissed the same day it was filed. 4 C.F.R. § 21.1(f).

In its August 25 letter (received August 31) requesting reconsideration, SBS for the first time identified a basis for protest. SBS alleged that White's quotation was "nonresponsive" grounded on its belief that, considering White's Federal Supply Schedule list prices, White's quoted offer could not include the complete filing system, with

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the specified features and accessories, required by the agency. SBS also attempted to characterize its original submission as directed toward this allegation, and included a copy of White's quotation.

We find that SBS's protest concerning responsiveness, considered independently of its first submission to our Office, is untimely.

The solicitation was for three electric-powered rotary files. After it quoted a price of \$26,913.93, a purchase order was awarded to White on July 17. When SBS was notified of this on July 23, it wrote to the Corps to complain that White's quoted price was so low that SBS did not believe White had quoted a price for the complete requirement. On August 4, SBS learned by telephone that the Corps anticipated taking 4 weeks to respond to its complaint, and that, in the meantime, the files would be purchased from White. Thereafter, on August 7, SBS filed its original protest with our Office which we dismissed as failing to state a basis of protest.

Under our regulations, if an initial protest has been filed with the agency, a subsequent protest must be filed with this Office within 10 days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Since an initial protest was filed with the agency on July 24, SBS was obliged to file any protest with our Office within 10 days of actual or constructive knowledge of initial adverse agency action.<sup>1/</sup> In this context, we find that the August 4 telephone conversation, where SBS learned that the files would be purchased from White notwithstanding SBS's complaint, constituted adverse agency action. See Guild Associates, Inc.--Request for Reconsideration, B-224098.2, Oct. 6, 1986, 86-2 CPD ¶ 396. This means that SBS had 10 working days from August 4 (i.e., through August 18) to file a proper protest with our Office. Marathon LeTourneau Company--Reconsideration, B-221234.2, Jan. 9, 1986, 86-1 CPD ¶ 24.

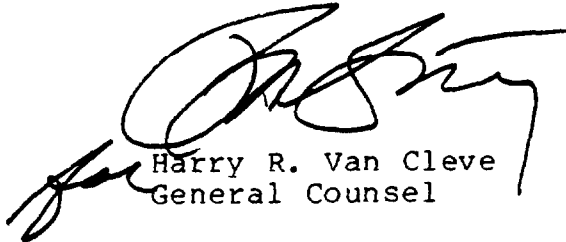
SBS' initial protest filed on August 7 did not contain the protest ground that SBS has alleged in its August 31 request for reconsideration so that protest does not count in

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1/Adverse agency action is defined as:

"any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include . . . the award of a contract. . . ." 4 C.F.R. § 21.0(e).

determining timeliness. SBS' request for reconsideration containing its current basis of protest was not filed until August 31, almost 2 weeks after the August 18 deadline for timely filing of the protest or more than 3 weeks after initial adverse agency action. We note that SBS submitted with its reconsideration request, a copy of White's quote which it apparently recently received. However, the quotation merely confirms information, White's quoted price for the filing systems, which SBS previously knew and thus does not provide any new grounds of protest. Therefore, SBS's protest is untimely, and is dismissed.



Harry R. Van Cleve  
General Counsel