



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paulk's Moving & Storage of Mobile, Inc.

File: B-229759.2

Date: January 29, 1988

DIGEST

Protest against agency's rejection of low bidder based on nonresponsibility determination is untimely where protest was filed with General Accounting Office more than 10 working days after protester learned of adverse agency action following protest to the agency.

DECISION

Paulk's Moving & Storage of Mobile, Inc., protests that it was incorrectly found nonresponsible, and thus ineligible for award, under invitation for bids (IFB) No. DABT01-87-B-1053, issued by the Department of the Army, Ft. Rucker, Alabama. Although Paulk's submitted the low bid, the contracting officer found the firm nonresponsible based upon a preaward survey which found that Paulk's would not be a legal entity at the time of the planned November 1, 1987, award. Paulk's disputes this finding. The Army further contends that the protest is untimely. We agree and therefore dismiss the protest.

By letter dated October 29, 1987, the contracting officer notified Paulk's that it had been found nonresponsible for the reasons previously stated. The protester sent a November 5 letter to the agency, which it contends was a protest to the agency. The contracting officer has advised us that, although she did not consider this letter a protest, she sent a November 24 reply to Paulk's, affirming her determination without explanation, and notifying the firm that contracts had been awarded. Nothing on the record indicates the precise date Paulk's received this letter, but on December 3 the protester wrote a letter to the Army referring to the November 24 letter, and advising that the firm would protest to our Office. By letter of December 8, Paulk's protested to our Office, but we dismissed the matter for failure to state the legal and factual grounds of

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protest, as required under our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1987). On December 21, 1987, Paulk's resubmitted its protest with additional details.

Our Regulations provide that, to be deemed timely, a protest must be filed within 10 working days after the basis for protest is known or should have been known, unless a protest was filed initially with the contracting agency, in which case a subsequent protest to our Office must be filed within 10 working days of the protester's actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(2) and (3).

The record shows that Paulk's was aware of its protest basis no later than November 5, when it filed its alleged protest. Hence, if, as the Army asserts, the November 5 letter did not constitute an agency-level protest, the protest to us clearly was untimely, as it was not received until December 21. If Paulk's November 5 letter constituted a valid agency protest, the November 24 response from the contracting officer clearly constituted initial adverse agency action; it affirmed that the agency's original position had not changed. Since the record shows that Paulk's received this response at least by December 3, as indicated by the letter of that day from Paulk's to the contracting officer, the protest would have to have been filed by December 17 in order to be timely. Because the protest was not filed until December 21, it is untimely and not for consideration on the merits.

The protest is dismissed.



Ronald Berger
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General Counsel