



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tioga Pipe Supply Company, Inc.

File: B-230040

Date: February 24, 1988

DIGEST

Protest which was initially untimely filed with contracting agency is untimely when subsequently filed at General Accounting Office (GAO) and will not be considered under either the good cause or significant issue exceptions to GAO timeliness requirements where there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of protest and where protest does not present a unique issue or one of widespread interest to the procurement community.

DECISION

Tioga Pipe Supply Company, Inc. protests the rejection of its offer under request for proposals (RFP) No. N00406-87-R-0807, issued by the Navy for pipe supplies, and the subsequent award of the contract to C.H. Berry & Associates.

We dismiss the protest as untimely.

Tioga states that its proposal was rejected because it did not conform with the solicitation's packaging and preservation requirements. The protester explains that it took exception to these requirements only because its supplier, Quanex Corp., South Lyon, Michigan, would not provide the tubes in accordance with the contract's packaging and preservation requirements. The protester further contends that since the awardee's tubes are going to be produced by Quanex, and since Quanex assured Tioga that it would not package the tubes "per the contract requirements," it is questionable whether the awardee will in fact supply the required items, even if the awardee did not take an exception to these requirements in its offer as Tioga did.

041355

The Navy states that it sent the protester notice of award no later than November 12. Assuming 1 week for mail delivery, Tioga should have received the notice no later than November 19, 1987. Tioga does not dispute the Navy's chronology and does not deny that it received the notice in due course. On or about December 17, 1987, Tioga filed a protest with the Navy against the award, contending that since Tioga's proposal of \$237,137.20 was below the award price of \$290,448.95, the contract should have been awarded to Tioga. The Navy denied the protest in a letter dated January 4, 1988 and on January 19, 1988, Tioga protested to our Office.

Under section 21.2(a)(3) of our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, a subsequent protest to our Office will be considered timely if the initial protest was filed in accordance with our timeliness requirements. Section 21.2(a)(2) of our regulations requires that a protest be filed not later than 10 working days after the basis of protest is known or should have been known. Here, Tioga did not file its agency-level protest against the rejection of its proposal and the award of the contract until more than 10 working days after it learned of the award to C.H. Berry & Associates and thus its protest to our Office is untimely.

In its protest to our Office, Tioga, for the first time, contends that the award to C.H. Berry & Associates is improper because it is using the same supplier, Quanex, that Tioga planned to use. Thus, Tioga asserts that the Navy will receive nonconforming items from the awardee. Tioga does not indicate when it first learned that Quanex was the awardee's supplier, the information which forms the basis of its protest to our Office. The record indicates, however, that between approximately November 19, 1987 and, at the earliest, December 17, 1987--a period of 4 weeks--the protester made no attempt to obtain from the agency information concerning this acquisition or the reasons for award to the other firm. A protester must diligently pursue the information forming the basis for a protest. If a protester fails to do so within a reasonable time, we will dismiss the ultimately-filed protest as untimely.

Electrospace Systems, Inc., B-227964, July 27, 1987, 87-2 CPD ¶ 94. Accordingly, we view the January 19, 1988 protest, filed 2 months from receipt of the notice of award, also as untimely because Tioga did not diligently pursue the information that forms the basis of the protest. Id.

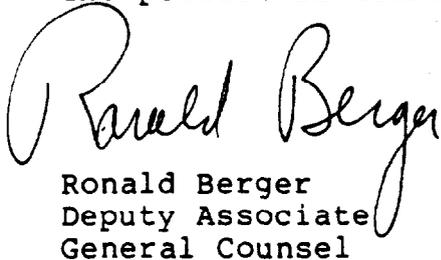
Tioga requests that our Office consider its present protest, despite the fact that its initial protest was not timely filed with the Navy, under the good cause exception in our Bid Protest Regulations, 4 C.F.R. § 21.2(c). This provision

states that for good cause shown or where a protest raises issues significant to the procurement system, we may consider a protest even though it is not filed in a timely manner.

The good cause exception to our timeliness requirement is limited to circumstances where some compelling reason beyond the protester's control prevented the timely filing of the protest. Filmore Construction Co., B-228656, Aug. 7, 1987, 87-2 CPD ¶ 141. Tioga has not stated any such reason, and none is suggested by the protest materials which it submitted to our Office.

The significant issue exception will be invoked where the protest raises an issue of first impression or that would have widespread significance to the procurement community. McCain Associates, B-226533, Mar. 23, 1987, 87-1 CPD ¶ 336. In our judgment, the protest does not present an issue of widespread significance to the procurement community.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned to the left of the typed name and title.

Ronald Berger
Deputy Associate
General Counsel