



Comptroller General
of the United States

Washington, D.C. 20548

Mark

Decision

Matter of: Garden State Brickface & Stucco Company

File: B-237153

Date: October 31, 1989

DIGEST

Protest to General Accounting Office filed more than 10 working days after oral notification of the basis of protest is dismissed as untimely since protester is charged with constructive knowledge of Bid Protest Regulations published in the Federal Register, notwithstanding alleged incorrect advice from government agency concerning the filing of a protest.

DECISION

Garden State Brickface & Stucco Company protests the rejection of its bid and award of a contract to Plus One Masonry under invitation for bids No. 89-232, issued by the Central Intelligence Agency (CIA) for certain construction at the Interagency Training Center. The protester's bid was rejected because it failed to acknowledge receipt of amendment No. 1.

We dismiss the protest as untimely.

The CIA has advised us that it notified Garden State by telephone on September 8 that its bid was rejected as non-responsive and that the contract was awarded to Plus One Masonry. The contracting officer also sent a letter, dated September 7, to Garden State, stating that its bid had been rejected and notifying it of the award of the contract to Plus One Masonry. According to affidavits submitted by the agency, Garden State called the CIA on September 11 and, in the course of several conversations, confirmed its awareness that its bid was rejected.

Garden State does not dispute the agency's statement of facts. Instead, Garden State states that it orally advised the agency that it intended to protest the agency's action and asked to meet with agency personnel to explain the

046953/139894

protest "in the hope that the decision could be changed." Garden State representatives then traveled from New Jersey to Virginia, where, on September 22, they met with agency officials to discuss the bid rejection and, in the protester's words, to allow it to "officially detail my protest." The protester indicates that the contracting officer advised it that he was "rejecting my protest" and that this decision was final. At this meeting the agency did not advise Garden State that it should submit its protest in writing within a 10-day period of time but did advise it to contact the General Accounting Office. The protester states that it contacted "the G.A.O." at "approximately 1 p.m." on the same day and "was advised" on the telephone that as long as the protester had orally notified the CIA of its intention to protest, its right to protest would be preserved. Based on this information, the protester says it did not submit a written protest until the following week when the company representatives returned to New Jersey. We received Garden State's protest on September 27.

Garden State never filed a written protest with the CIA. The agency did receive a copy of the protest filed by Garden State with our Office on September 27, but argues that this protest, filed 13 working days after the September 8 telephone call, is untimely under our Bid Protest Regulations.

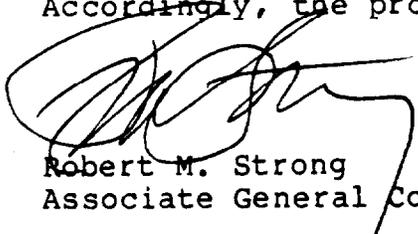
Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989), require that protests must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. An oral notification of the basis is sufficient to start the 10-day period running. Aaron Refrigeration Servs., B-225034, Nov. 7, 1986, 86-2 CPD ¶ 539. Since Garden State's written protest was not received in our Office within 10 days after the oral notification, the protest is untimely and will not be considered.

Garden State's oral complaints to the contracting officer do not constitute a protest such that a subsequent protest to our Office would be timely. Oral protests are not provided for under the Federal Acquisition Regulation § 33.101 (FAC 84-40). Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ 320.

Further, Garden State contends that in view of the CIA's failure to inform it of the timeliness requirements of our Regulations and the advice it received from "the G.A.O." over the telephone, we should consider its protest on the merits. We have been unable to determine whether anyone at

our Office provided this erroneous advice, as Garden State alleges, given that the protester's account of its alleged telephone conversation with our agency is nonspecific. In any event, we have previously held that prospective contractors are on constructive notice of our Bid Protest Regulations, since they are published in the Federal Register and the Code of Federal Regulations, even where erroneous information about protest procedures is provided by a government agency, Universal Fuel, Inc., B-231870, Oct. 4, 1988, 88-2 CPD ¶ 318, or by our Office, Little People's Productivity Center, Inc.--Request for Recon., B-222103.2, Apr. 17, 1986, 86-1 CPD ¶ 379.

Accordingly, the protest is dismissed.



Robert M. Strong
Associate General Counsel