

Perry



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Yale Materials Handling Corporation
File: B-241005
Date: October 11, 1990

Robert G. Becker for the protester.
Anne B. Perry, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Letter to agency stating future intent to submit a protest concerning the agency's rejection of bid as nonresponsive does not constitute a protest and subsequent protest filed with the General Accounting Office more than 10 working days after the basis for protest was known is dismissed as untimely.

DECISION

Yale Materials Handling Corporation protests the award of a contract to Construction Machinery Company under invitation for bids No. F65501-90-B-0045, issued by the Department of the Air Force for an electric lift truck. Yale alleges that the agency improperly rejected its bid as nonresponsive.

We dismiss the protest as untimely.

By a letter dated August 1, 1990, and received by the protester on August 6, the agency informed Yale that its bid was no longer being considered for award since it did not meet its minimum requirement of having a 4,000 pound capacity. On August 10, Yale sent a letter to the contracting officer in which Yale stated that:

"Your decision to eliminate consideration of our bid is faulty as is your entire bid. In the event that you attempt to make an award on the basis of this solicitation and on the basis of what you have said in your 1 August letter you can consider a protest will be filed."
(Emphasis added.)

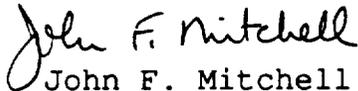
Since Yale had not received a response to its August 10 letter, it called the agency, on August 31, and was informed

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that a contract had been awarded to Construction Machinery Company. By a letter dated August 31, but not received in our Office until September 4, Yale protested the award to Construction Machinery Company.

Under our Bid Protest Regulations, protests must be filed not later than 10 days after the basis of protest is known, or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990). The expression of an intent to file a protest of an award is not the same as actually filing a protest. Roanwell Corp., B-235792, July 20, 1989, 89-2 CPD ¶ 70. Yale's letter of August 10 to the contracting officer did not constitute a protest since it explicitly announced Yale's intent to submit a future protest. The protest filed in our Office is untimely since it was filed almost 1 month after the August 6 letter, the date on which Yale's own correspondence to the agency shows that Yale knew its basis of protest. Id.

The protest is dismissed.


John F. Mitchell
Assistant General Counsel