



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Watkins Motor Lines, Inc.

File: B-242392

Date: January 18, 1991

William E. Kenworthy, Esq., Rea, Cross & Auchincloss, for the protester.
Herbert F. Kelley, Jr., Esq., and Sophia L. Rafatjah, Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest which was initially untimely filed with the contracting agency will not be considered by the General Accounting Office.

DECISION

Watkins Motor Lines, Inc. protests the rejection of its tenders as nonresponsive under an unnumbered solicitation issued by the Military Traffic Management Command, Department of the Army, for transportation of government freight by motor and/or rail carriers from the Defense Depot in Memphis, Tennessee to various regional destinations in the United States.

We dismiss the protest.

The solicitation was issued on July 12, 1990. The solicitation's tender forms required carriers to insert in the appropriate spaces transportation rates in cents per 100 pounds for each weight category (ranging from 200 to 10,000 pounds) in each mileage group (of various distances) for any or all of the 11 regional destinations selected by the carrier. The tender forms for each region also included a blank area for a carrier to insert a minimum charge. For two regions, Watkins inserted on the tender forms its rates for each weight category in each mileage group. Watkins did not insert in the appropriate area on either of the tender forms a minimum charge.

By letter dated October 23 and received by Watkins on October 26, the agency rejected Watkins' tenders as

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nonresponsive because "all rate/charge items were not properly completed." Along with this letter, the agency returned to Watkins its tender forms with the blank minimum charge areas circled indicating the section on the tender forms that Watkins failed to complete. On November 21, Watkins filed an agency-level protest challenging the rejection of its tenders as nonresponsive. The agency denied Watkins' agency-level protest on December 5. Watkins filed this protest on December 18.

Our Bid Protest Regulations provide that if a protest has been filed initially with the contracting agency, our Office will consider a subsequent protest if the initial protest to the agency was timely filed no later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2), (3); see Paragon Dynamics, Inc., B-235567, May 24, 1989, 89-1 CPD ¶ 504.

Here, Watkins did not protest the rejection of its tenders to the agency until November 21, more than 10 working days after receiving on October 26 the agency's letter of October 23, stating that the agency had rejected its tenders as nonresponsive for failing to complete all rate/charge items. With this letter the agency also returned to Watkins its tenders on which the agency circled the blank minimum charge areas which Watkins failed to complete. Clearly, Watkins had notice of its basis of protest on October 26. Since Watkins' protest to the agency was untimely--filed 18 working days after receiving notice of the rejection of its tenders as nonresponsive--we will not consider its subsequent protest to our Office.1/

Accordingly, the protest is dismissed.

Michael R. Golden
Michael R. Golden
Assistant General Counsel

1/ Watkins alleges that it delayed filing its protest until it discovered on November 13 that it was low for the two tenders which were rejected. However, where a firm receives a rejection letter for nonresponsiveness, an offeror should reasonably presume it was otherwise in line for award.