



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

Decision

Matter of: The Montgomery Companies

File: B-242858.2

Date: April 25, 1991

Henry E. Kinser, Esq., Kincaid, Wilson, Schaeffer, Hembree, Van Inwegen & Kinser, for the protester. John W. Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed as untimely where filed more than 10 working days after basis of protest is known, or should have been known through receipt of information released pursuant to Freedom of Information Act request and in contracting agency report responding to earlier protest.

DECISION

The Montgomery Companies protest the award of a lease to the Paragon Group under a solicitation for offers (SFO) issued by the Department of Agriculture for office space in Lexington, Kentucky.

We dismiss the protest as untimely because it was filed more than 10 working days after the protester knew, or should have known the basis for its protest.

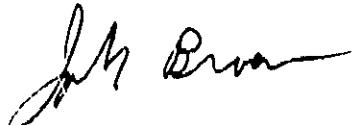
Montgomery filed an earlier protest of the award to Paragon (B-242858). We will address that protest in a separate decision. In its second protest, Montgomery argues that the lease offer submitted by Paragon, as the management and leasing agent for the offered building, should have been rejected as "nonresponsive" because it was contingent on later approval by the building owner, it offered noncontiguous space and failed to offer a loading facility. According to Montgomery, these allegations are based on information it received in response to a Freedom of Information Act (FOIA) request and in the Agriculture Department's report filed in response to the firm's earlier protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be

filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1991). Here, Montgomery received the agency's response to its FOIA request on or before February 21, 1991, and received the contracting agency's report on the earlier protest on March 14. The documents upon which Montgomery bases its protest, copies of the initial proposal and the best and final offer submitted by the Paragon Group and agency evaluation reports, were included in the FOIA response and the agency report. Since Montgomery's protest was not filed in our Office until April 19 the protest is untimely and will not be considered. Consolidated Devices, Inc., B-232651.2, Dec. 8, 1989, 89-2 CPD ¶ 530.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protest is dismissed.



John Brosnan
Assistant General Counsel