



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Skyline Industries, Inc.

File: B-244542

Date: July 18, 1991

Joseph E. Cates II, for the protester.
Philip F. Eckert, Jr., Esq., Defense Logistics Agency, for the agency.
Anne B. Perry, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest filed with the General Accounting Office more than 10 days after agency denied agency-level protest is untimely. Protester's continued pursuit of the matter with the contracting agency did not alter its responsibility to conform to timeliness requirement of Bid Protest Regulations.

DECISION

Skyline Industries, Inc. protests the award of a contract to the Conrad Company under request for proposals (RFP) No. DLA400-91-R-3044, issued by the Defense Logistics Agency (DLA) for aircraft seat covers. Skyline alleges that the Conrad Company has not performed certain required prequalification testing.

We dismiss the protest as untimely.

Skyline initially protested this identical issue to the contracting agency in a letter dated May 8, 1991. DLA reviewed the protester's allegations, and denied the protest by letter dated May 15. Skyline reiterated its grounds for protest and requested the agency to reconsider its position in a letter dated May 20. On June 7, the DLA again denied Skyline's protest, and on June 20, Skyline protested to our Office.

Our Bid Protest Regulations provide that if an initial protest has been filed timely with the contracting agency, we will consider a subsequent protest to our Office if it is filed within 10 working days after the protester has acquired knowledge of initial adverse agency action on the protest.

56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(3) (1991)). Our Regulations define adverse agency action as "any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency," including a decision on the merits of the protest. Id. (to be codified at 4 C.F.R. § 21.0(f)). DLA's May 15 letter denying Skyline's protest was a decision on the merits. As a result, to be timely, Skyline's protest to our Office had to be filed within 10 working days after receipt of that letter, that is some time before May 20, and since it was not filed until June 20, it is untimely.

Although Skyline continued to pursue the matter with the agency in its May 20 letter, and the agency responded, section 21.2(a)(3) of our Regulations is clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. Accordingly, Skyline's decision to continue to pursue the matter at the agency, and the agency's continued consideration of the matter did not alter Skyline's responsibility to conform to the filing requirements of our Regulations. Lawrence Realty, B-243063, Mar. 5, 1991, 91-1 CPD ¶ 251.

The protest is dismissed.

Paul Lieberman
Assistant General Counsel