



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

## Decision

**Matter of:** Hatch & Fortwangler, Inc.

**File:** B-244752

**Date:** July 17, 1991

Richard J. Hatch for the protester.

Catherine M. Evans, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is dismissed as untimely where initial agency-level protest of award was filed more than 4 months after protester learned of basis for protest.

### DECISION

Hatch & Fortwangler, Inc. (H&F) protests the award of a contract to Computer Associates International, Inc. (CAI) under request for proposals (RFP) No. CS-91-001, issued by the U.S. Customs Service for database administration and software support. H&F alleges various improprieties with respect to the award to CAI, and complains that the contracting officer denied its agency-level protest of the award on the grounds that it was untimely and that H&F was not an interested party to protest the award.

We dismiss the protest as untimely.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1991). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, H&F's agency-level protest would have to have been filed within 10 working days after it learned of the basis of its protest.

In its protest to our Office, H&F states that it became aware of certain protest grounds in September 1990, and the remaining issues in late January 1991. However, H&F did not file a protest with the contracting officer until

June 4, 1991. Its agency-level protest therefore was untimely under the above standard.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting the procurement process. Advanced Health Sys.--Recon., B-227779.2, Aug. 27, 1987, 87-2 CPD ¶ 205. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id. The only exceptions to our Regulations' timeliness requirements are where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or a significant issue (one of widespread interest to the procurement community that has not been considered before) is involved. See 4 C.F.R. § 21.2(c); Grant Tech. Servs., B-235231.2, May 26, 1989, 89-1 CPD ¶ 514. Neither is the case here.

While it is not clear from the protest documents, it also appears that H&F may not have been an actual offeror under the solicitation, but instead was a prospective subcontractor. If this is indeed the case, we could not have considered H&F's protest even if it had been timely filed because our Office does not consider such subcontractor protests. 4 C.F.R. § 21.3(m)(10).

The protest is dismissed.

  
David Ashen  
Deputy Assistant General Counsel