



Comptroller General
of the United States

Washington, D.C. 20548

M.H.
145630

Decision

Matter of: Mortz Brothers, Inc.

File: B-245994

Date: January 13, 1992

Thomas C. Nemes, Esq., Daguanno, Nemes & Accettura, for the protester.

Victor J. Martin, Esq., for Temperature Services, Inc., an interested party.

Herbert F. Kelley, Jr., Esq., and Gerald P. Kohns, Esq., Department of the Army, for the agency.

Behn Miller, Esq., Office of the General Counsel, GAO participated in the preparation of the decision.

DIGEST

Protest that agency's alleged failure to provide bid bond form caused protester to submit nonresponsive bid is dismissed as untimely where protest was filed more than 10 working days after protester learned that its agency-level protest on this ground had been denied.

DECISION

Mortz Brothers, Inc. protests the award of a contract to Temperature Services, Inc., under invitation for bids (IFB) No. DAKF15-91-B-1114, issued by the Department of the Army for the renovation and installation of two central air conditioning systems at the U.S. Army Reserve Center, Livonia, Michigan. Although Mortz was the apparent low bidder for this procurement, because it failed to submit a bid bond, the contracting officer rejected Mortz's bid as nonresponsive.¹ In its protest, Mortz contends that the Army failed to provide it with a copy of bid bond Standard Form (SF) 24; because this form was allegedly missing from Mortz's bid package, Mortz claims that it had no knowledge that a bid bond was required for this procurement and accordingly the Army's rejection of its bid as nonresponsive was improper.

We dismiss the protest.

¹The solicitation was issued on August 5, 1991; bid opening was held on September 5.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. See 4 C.F.R. § 21.2(a)(3) (1991). Here, Mortz originally filed an agency-level protest with the Army on September 6. The Army issued a formal agency denial of this protest on September 10; the agency report shows that on September 13, the Army contracting officer spoke by telephone to Mortz's counsel who was aware that Mortz's protest had been denied.² Accordingly, Mortz's subsequent protest to our Office on September 30--more than 10 working days after the protester had knowledge of the agency's denial of its protest--is untimely.³

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel

²Apparently, Mortz's counsel received the agency's September 10 denial of its protest while he was speaking to the contracting officer on the telephone.

³In this case, Mortz failed to respond in any detail to the Army's assertion in the agency report that Mortz's protest was untimely. Rather, Mortz merely requested that the protest be decided on the existing record. Since the contracting officer's phone record log--included as an exhibit in the agency report--demonstrates that Mortz was aware of the agency-level denial of its protest on September 13, and since Mortz has not refuted the Army's position, there is no basis to conclude that Mortz's protest was timely filed. See A-Able Appliance, B-242673.3, May 14, 1991, 91-1 CPD ¶ 467; Facilities Eng'g & Maint. Corp., B-233974, Mar. 14, 1989, 89-1 CPD ¶ 270. In this regard, we note that although Mortz's letter of protest is dated September 18, it was not received by our Office until 5:10 p.m. on September 30--as evidenced by our time/date stamp--and is therefore not for consideration on the merits. Single Screw Compressor, Inc., B-244607, Aug. 15, 1991, 91-2 CPD ¶ 155.