

Jordan

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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alfa Kleen
File: B-244350
Date: September 16, 1991

Sylvia Evangelista for the protester.
Martin C. O'Brien, Esq., Department of the Air Force, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of cancellation of purchase order is dismissed as untimely where the protest was initially filed with the contracting agency more than 10 working days after protester knew or should have known its basis of protest, and was subsequently filed with the General Accounting Office more than 10 days after the protester received oral notification that its agency-level protest was denied.

DECISION

Alfa Kleen protests the cancellation of a purchase order for cleaning compound under solicitation No. F04700-91-T7463, issued by Edwards Air Force Base, California, and the subsequent placement of a "sole source" purchase order with another firm.

We dismiss the protest as untimely.

On April 2, 1991, the Air Force requested oral quotations from Alfa Kleen, Fortune Chemical Co., and a third firm for a quantity of cleaning compound for jet engine parts, Part No. X-IT5, a product of Fortune. Alfa had furnished its product, AK-020, under two prior Air Force purchase orders which specified X-IT5 or equal. Since the using facility was dissatisfied with the performance of AK-020, only quotes on X-IT5 were solicited.

Based on its understanding that Alfa's low quote was for X-IT5, on April 2, the Air Force issued Alfa Purchase Order No. P-3865, which specified "PN X-IT5. Do not substitute."

After processing the purchase order, the Air Force received a telefacsimile from Alfa which indicated it planned to supply its own AK-020 product. On April 5, the Air Force contacted Alfa and verified that Alfa intended to supply its AK-020 product. Thereupon, the Air Force told Alfa that the purchase order was being canceled because AK-020 was unacceptable. Alfa requested additional information on April 11 and the Air Force advised Alfa that its product did not meet the applicable military specification.

By letter of April 22, received by the Air Force on April 25, Alfa protested the cancellation. In response, the Air Force telephoned Alfa on May 2 to inform it that its product was unacceptable as an "equal" product for the current procurement. This same information was also conveyed by a May 7 letter to Alfa. Alfa subsequently filed this protest with our Office.

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). Further, our Regulations provide that a matter initially protested to the 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); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206.

Alfa's April 5 oral notification concerning the cancellation of its purchase order was sufficient to start the 10-day time period running; written notice was not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. Since Alfa failed to file its initial protest with the Air Force until April 25, more than 10 working days later, its agency-level protest was untimely. Consequently, its subsequent protest to our Office is also untimely. Tandy Constr., Inc., supra.

Even if Alfa was not aware of its protest basis until the April 11 telephone conversation with the Air Force--in which case its April 25 agency protest would have been timely--Alfa's protest to our Office would still be untimely. The Air Force's May 2 oral advice to Alfa, reiterating its position that Alfa's product was unacceptable, was sufficient to put the protester on notice that its protest was denied and, thus, to begin the running of the 10-day time period. See Swafford Indus., supra. Since Alfa's protest to the General Accounting

Office was not even mailed to our Office until May 18 (the letter is postmarked May 18), more than 10 working days after May 2, it was untimely filed when it was later delivered to our Office.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul Lieberman", followed by a horizontal line.

Paul Lieberman
Assistant General Counsel