

Comptroller General  
of the United States

Washington, D.C. 20548

145951

## Decision

**Matter of:** Advanced Health Systems--Reconsideration

**File:** B-246793.2

**Date:** February 21, 1992

Barry L. Biggs for the protester,  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

### DIGEST

1. Protest against elimination of proposal from the competitive range was properly dismissed as untimely when filed more than 10 working days after protester was advised of its exclusion from competitive range and reasons for exclusion; subsequent discovery of additional information to support original bases of protest does not make protest timely.

2. Protester whose proposal has been eliminated from the competitive range is not an interested party to challenge award to another firm.

### DECISION

Advanced Health Systems requests reconsideration of our November 26, 1991, dismissal of its protest as untimely. AHS had protested the Air Force's exclusion of AHS' proposal from the competitive range under request for proposals (RFP) No. F41689-90-R-0030. We dismissed the protest because we found that it had not been filed within 10 working days after AHS knew, or should have known, the basis for protest, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991). AHS also seeks to file a "new" protest, based on information related to its original protest but not obtained until recently. We affirm our dismissal.

AHS submitted a proposal under the RFP to provide child/adolescent services at two Air Force medical centers in Texas. The Air Force technical team evaluated AHS' proposal and found it technically unacceptable. By letter of August 19, 1991, the contracting officer advised AHS that its proposal was outside the competitive range and that the firm was therefore ineligible for award. In that letter,

the Air Force advised AHS that it was found unacceptable in the two most important technical evaluation areas, operations and management, and listed the specific deficiencies of its proposal. AHS requested reconsideration of the rejection in a letter to the Air Force, dated August 23. AHS' letter stated how AHS believed its proposal satisfactorily addressed the deficient areas. The contracting officer responded by letter of August 29, advising the protester that the acceptability of AHS' proposal would not be reconsidered. AHS continued communicating with the Air Force. On November 26, AHS filed a protest in our Office, challenging its exclusion from the competitive range and challenging the award of the contract.

We dismissed as untimely the protest filed on November 26, because it was filed more than 10 working days after the protester was advised of its proposal's exclusion from the competitive range and of the specific reasons for the proposal's rejection, in the August 19 letter. 4 C.F.R. § 21.2(a)(2). A protest against the elimination of a proposal from the competitive range must be filed within 10 days of when the agency notifies the protester of its elimination if the notice contains the specific reasons why the agency rejected the proposal. See Anthony Hernandez--Recon., B-246101.2, Nov. 20, 1991, 91-2 CPD ¶ 487. In such circumstances, a protester may not wait until the contract has been awarded and the protester has been debriefed to protest its exclusion.


Even if we were to consider the reconsideration request letter of August 23 as a protest to the agency, this protest effectively was denied by the agency letter of August 29. Under our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to us must be filed within 10 days of formal notification of, or actual or constructive notice of, initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Accordingly, AHS' November 26 protest to our Office is untimely in any event.

In its "new" protest, AHS asks that we "consider the previous basis for protest," i.e., that the Air Force unreasonably rejected its proposal as unacceptable and improperly awarded the contract, based on new information received at a technical debriefing held on December 3. Although AHS may have recently obtained information providing additional support for its allegation that its proposal was improperly rejected, the fact remains that the protest grounds being raised are the same as the ones raised

originally in the untimely protest. An untimely protest cannot be made timely by virtue of the protester's later acquisition of additional information.

Finally, to the extent AHS objects to the award to Human Affairs International based on an alleged conflict of interest, AHS is not an interested party to challenge the contract award. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (1988), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective supplier whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Since AHS' proposal was eliminated from the competitive range because it did not have a reasonable chance for award (a determination which our Office will not review because it was not timely protested), and there was at least one other proposal besides the awardee's in the competitive range, AHS is not an interested party to challenge the award.

The prior dismissal is affirmed.

  
Ronald Berger  
Associate General Counsel