148673 Evans

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

Decision

Matter of: Lone Star Gas Company--Reconsideration

File: B-249700.2

Date: March 3, 1993

Paul M. Zeis, Esq., for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision dismissing protest as untimely is affirmed where record supports General Accounting Office's conclusion as to the date protester learned of protest basis.

DECISION

Lone Star Gas Company requests reconsideration of our decision, Lone Star Gas Co., B-249700, Nov. 25, 1992, 92-2 CPD ¶ 383, in which we dismissed Lone Star's protest of the Department of Veterans Affairs' (VA) award of a sole-source contract to Gulf Gas for transportation of natural gas to the VA medical center in Dallas, Texas.

We affirm the dismissal.

A preliminary issue in Lone Star's protest was its timeliness--specifically, whether Lone Star learned of the contract with Gulf Gas more than 10 days before filing its protest on August 5, 1992. According to the agency, Lone Star knew of the June 19 contract with Gulf Gas as early as June 24, when Lone Star representatives attended a meeting of utilities representatives in Dallas at which the contract was discussed. Lone Star disputed the agency's assertion, claiming that it learned of the Gulf Gas contract on July 22, exactly 10 working days before filing its protest.

In support of its assertion that it had learned of the Gulf Gas contract on July 22, Lone Star submitted contemporaneous notes of two conversations between one of its employees and the contracting officer. During the first conversation, which took place on July 20, the Lone Star employee wrote that the contracting officer "would not tell me if [the agency has] signed with Gulf Gas--they are supposed to." During the second conversation, on July 22, the Lone Star employee wrote that the agency had received approval to

proceed with Gulf Gas, and noted several details of the contract.

A protester is charged with knowledge of the basis of protest at the point where agency personnel convey to the protester the agency's intent to follow a course of action adverse to the protester's interests. MIDDCO, Inc.--Recon., B-235587.2, Oct. 31, 1989, 89-2 CPD ¶ 402. Based on the language in the Lone Star employee's July 20 note--indicating that the agency was "supposed to" sign a contract with Gulf Gas--we found that Lone Star appeared to be aware of the likelihood that the agency would enter into a contract with Gulf Gas, the adverse course of action on which Lone Star's protest was founded. Since Lone Star did not file its protest within 10 working days of July 20, we concluded that the protest was untimely. Lone Star Gas Co., supra.

In its reconsideration request, Lone Star contends that we misconstrued the language in the July 20 note. Lone Star now asserts that the notation "they are supposed to" did not refer to the signing of a contract with Gulf Gas, but instead was intended to mean that the contracting officer was supposed to hear from VA headquarters about possible gas supply alternatives. Lone Star concludes that the note thus did not show that it knew about the Gulf Gas contract prior to the July 22 conversation with the contracting officer.

We think our reading of the July 20 note was the only reasonable one; the plain language of the note--"would not tell me if they've signed with Gulf Gas--they are supposed to"--clearly indicates a perception on the part of the Lone Star employee that the agency intended to enter into a contract with Gulf Gas. Lone Star's alternative reading is unreasonable, in our view, because it ignores the presumed relationship between the two statements. In this regard, the statement "--they are supposed to" is meaningless by itself, as it does not state what "they" are supposed to do. Since it logically relates to the preceding statement concerning the signing of a contract with Gulf Gas, and on its face would be meaningless otherwise, we are compelled by logic to conclude that our reading of the note was the correct one.

Moreover, our decision that Lone Star's protest was untimely was not grounded exclusively on our conclusion that the notation "they are supposed to" evidenced Lone Star's knowledge of the agency's intent to contract with Gulf Gas. Our decision also noted that Lone Star apparently conceded that it had such knowledge before July 22 when it advanced the following argument:

> "Assuming, arguendo, that the GAO finds that [the contracting officer] told [the Lone Star employee] that 'a contract had been signed.' What kind of contract? For how long? . . . It was not until July 22 that [the contracting officer] told [the Lone Star employee] that the contract was a sole source transportation agreement for 10 years! It was not until then that [Lone Star] could have realized that Lone Star . . . was excluded from transporting this gas for 10 years." (Emphasis in original.)

Since Lone Star would have had no basis to argue that it did not know the terms of the Gulf Gas contract until July 22 unless the record showed that it had some less specific information before that date, we concluded that Lone Star knew of the agency's intent to award a contract to Gulf Gas before July 22.

Our conclusion also is supported by other information in the record which we did not find necessary to discuss in our decision. First, the record is clear that Lone Star knew before July 22 that the agency was considering a proposal from Gulf Gas, the only other company with a franchise to deliver gas in the city of Dallas. The agency furnished an affidavit from a city of Dallas employee stating that he told a Lone Star representative on June 24 that Gulf Gas was planning to construct a pipeline for the VA medical center. The agency also submitted an affidavit from the chairman of the Dallas Area Utilities Coordinating Council stating that the Gulf Gas pipeline was discussed at a July 9 meeting in the presence of a Lone Star representative. On July 15, Lone Star wrote the agency proposing a new gas transportation agreement at approximately half the price the agency was then paying, evidence that the firm recognized that another source was under consideration. Second, the agency offered its own notes of the July 20 telephone conversation discussed above. In those notes, the contracting officer states that she explained to the Lone Star employee that the VA "had accepted [the Gulf Gas proposal] as being in [its] best interest." The notes also record a statement by the Lone Star employee that there was no need to waste the agency's time or Lone Star's if the contract had already been signed, and a statement in response by the contracting officer that "the contract had

been signed." We conclude that the record supports our view that Lone Star knew of VA's intent to award a contract to Gulf Gas before July 22, and that Lone Star's protest was untimely as a result.

The dismissal is affirmed.

for Robert P. Murphy
Senior Associate General Counsel