



Comptroller General
of the United States

324:43

Washington, D.C. 20548

Decision

Matter of: IMDT, Inc.
File: B-252449.2
Date: March 16, 1994

DECISION

IMDT, Inc., a small disadvantaged business (SDB) concern which submitted a proposal as part of a joint venture, protests the rejection of its proposal as technically unacceptable under, and the simultaneous cancellation of, request for proposals (RFP) No. F26600-91-R-0220, a small disadvantaged business set-aside issued by the Department of the Air Force for travel services at bases in Nevada and Idaho.

By letter dated October 13, 1993, the agency notified the protester that its proposal was rejected as technically unacceptable since it failed to satisfactorily demonstrate that it, as the SDB concern, would retain majority control of the joint venture in order to qualify for award under the small disadvantaged business set-aside. By letter dated October 19, the protester filed an agency-level protest, requesting that the agency reconsider its decision concerning the protester's SDB status and its decision to cancel the RFP. The protester requested that the agency respond no later than October 21. The protester stated that in the event its agency-level protest was denied, it would take action which it deemed necessary to preserve the integrity of procurements involving SDB concerns. By letter dated October 21, the agency denied the protester's agency-level protest, stating that its "proposal [was] unacceptable" because the protester failed to demonstrate that as the SDB, it would retain majority control of the joint venture in order to be eligible for award under the small disadvantaged business set-aside. On February 18, 1994, the protester filed this protest with our Office, challenging the same matters which it challenged in its agency-level protest.


We dismiss the protest as untimely because it was filed more than 10 working days after the protester initially received actual or constructive knowledge of adverse agency action on its protest.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action," 4 C.F.R. § 21.2(a)(3) (1993). The term "adverse agency action" is defined in our regulations as "any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency." 4 C.F.R. § 21.0(f); Instruments For Industry, Inc., B-250693, Feb. 16, 1993, 93-1 CPD ¶ 143.

Here, the agency's letter of October 21, 1993, denying the protester's agency-level protest, constituted initial adverse agency action which required the protester to file its protest with our Office within 10 working days of receiving this letter. Because the protester did not file its protest with our Office for approximately 4 months after learning of the agency's initial adverse agency action, its protest is untimely.

The timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The protest is dismissed.


 Michael R. Golden
 Assistant General Counsel

'After the denial of its agency-level protest and prior to filing its protest with our Office, the protester filed an appeal with the Small Business Administration Office of Hearings and Appeals, which subsequently ruled that it had no jurisdiction over the matters raised by the protester. The protester also had further discussions with senior contracting officials at the agency who ultimately did not support the protester's position. These contacts did not toll the running of the 10-day limitation period following the protester's receipt of the agency's initial adverse agency action. Instruments For Industry, Inc., supra.