



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Upham International, Inc.
File: B-257082
Date: May 2, 1994

DECISION

Upham International, Inc. protests the selection and evaluation process under solicitation No. Bangkok 93-004, issued by the Agency for International Development (AID), that resulted in a higher rating for a competitor and the selection of that competitor for price negotiations.

We dismiss the protest because it was not timely filed. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Our Regulations provide that a matter initially protested to the agency will be considered only if the subsequent protest to us is filed within 10 working days of the protester's knowledge of adverse agency action and 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. A protest such as this must be filed within 10 working days of when the protester learns its basis of protest. 4 C.F.R. § 21.2(a)(2). Here, Upham was notified of the selection on December 16, 1993, but did not lodge its agency-level protest until January 13, 1994, more than 10 working days later. Moreover, AID denied the protest by letter dated February 18, 1994; Upham's protest was not filed here until April 19. Thus, the protest is clearly untimely.

Although Upham acknowledges that our Office may consider its protest untimely, Upham argues that we should nevertheless consider its questions regarding "the selection procedures and criteria utilized by [AID], as well as the practices and procedures of [AID, which] are significant issues worthy of review by [the General Accounting Office] and which will prove beneficial to the procurement system as a whole." Upham further contends that since the contract is still in negotiations and work has not commenced, our consideration of its protest would only have minimal adverse effects on the procurement.

Exceptions to our timeliness rules are strictly construed and rarely used in order to prevent our timeliness rules from becoming meaningless. Air Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. We limit the use of the "significant issue" exception to protests that raise issues of widespread procurement interest and which have not been previously considered on the merits. See 4 C.F.R. § 21.2(c). While we recognize the importance of the matter to Upham, its complaint does not present an issue of widespread interest to the procurement community; its challenge relates only to this procurement. See Eurometall s.p.a.--Recon., B-250522.2, Apr. 15, 1993, 93-1 CPD ¶ 323. Therefore, we decline to consider the matter as raising a significant issue.

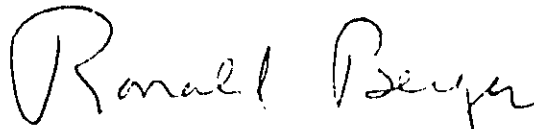
Upham also asserts that its attempt to resolve the matter with AID before protesting here constitutes "good cause" for us to consider the protest. First, while Upham did seek relief from the agency initially, as stated above, it did not do so in a timely fashion. Second, while under our Regulations we may consider an untimely protest for "good cause," 4 C.F.R. § 21.2(c), that term refers to a compelling reason beyond the protester's control that prevented it from filing a timely protest. Central Texas College, B-245233.5, Feb. 6, 1992, 92-1 CPD ¶ 151. Upham has not offered any reason--aside from its apparent unfamiliarity with protest procedures, which does not constitute good cause--why it could not have filed its protest in a timely manner. See Marathon LeTourneau Sales & Serv. Co., B-254258, Aug. 3, 1993, 93-2 CPD ¶ 77.

In this regard, Upham states that, although it has performed government contract work for more than 35 years, it has never challenged an agency's decision, and therefore has "inexperience in pursuing such a protest" and that the "10-day rule is harsh and inequitable."

A protester's lack of knowledge of our Regulations is no defense to a dismissal since our Regulations are published in the Federal Register and Code of Federal Regulations and protesters are charged with constructive notice of their contents. See Domation, Inc., B-228221, Sept. 28, 1987, 87-2 CPD ¶ 311. Moreover, we do not view the 10-day rule as harsh. The original timeliness rule required protests to be filed within 5 days; the requirement was relaxed to the current 10-day rule in order to provide protesters with additional time to obtain needed information, prepare their

submissions, and file them. Accordingly, we are not inclined to engage in a disquisition regarding the merits of the current rule.

Accordingly, Upham's protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the typed name and title.

Ronald Berger
Associate General Counsel