



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Million Air of Evansville

**File:** B-258512

**Date:** October 21, 1994

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### DECISION

Million Air of Evansville protests the award of a contract to Tri-State Aero, Inc. by the Defense Logistics Agency under solicitation No. DLA600-94-R-0023.

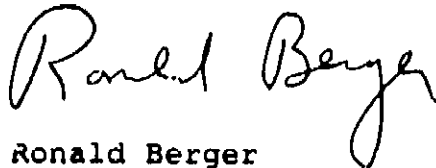
We dismiss the protest as untimely.

Million Air was notified by letter of April 15, 1994 (the protester states that it also received the letter on that date) that its proposal had been rejected as late. Million Air responded to the agency on May 10, stating that its proposal should be considered under the circumstances and requested an "immediate response." The protester states that on September 7, it contacted the agency and learned of the award. The instant protest was filed in our Office on September 16.

Although the protester asserts the timeliness of its protest based on when it learned of the award, the actual basis of protest is the rejection of the protester's proposal on April 15. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, a protest, on this basis, has to be filed with either the agency or our Office within 10 working days of the protester's learning of the basis for its protest. 4 C.F.R. § 21.2(a)(2), (3). If we interpret Million Air's letter of May 10 to be a protest, it appears to be untimely since it was not filed within this 10-day period. Since our rules also provide that any subsequent protest to us will not be considered unless the initial protest to the agency was

timely filed, 4 C.F.R. § 21.2(a)(3); Tandy Constr., Inc., B-238619, Feb. 22, 1990, 90-1 CPD ¶ 206, we dismiss the protest.

The protest is dismissed.



Ronald Berger  
Associate General Counsel

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<sup>1</sup>Even if we assumed that Million Air's agency-level protest was timely filed, the protest here would still be untimely. Our Regulations provide that where a protest initially has been filed timely with a contracting activity, any subsequent protest to our Office, 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). The term "adverse agency action" is defined in our Bid Protest 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). An agency's failure to respond to an agency-level protest within a reasonable period of time is adverse action. See Sterling Envtl. Servs., Inc., B-234768, May 12, 1989, 89-1 CPD ¶ 455.

Here, the protester's submission does not indicate that it ever received a reply to its May 10 letter, to which it had requested an immediate response. At some point well before September 7 Million Air, having heard nothing from the agency, should have considered that to be adverse action and should have protested here. Since it did not do so, we would be consider the protest untimely in any event.