



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter Of:** Allied Sanitation, Inc.

**File No.:** B-259376

**Date:** December 2, 1994

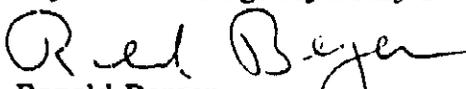
### DECISION

Allied Sanitation, Inc. protests the award of contract to Rutigliano Paper Stock, Inc. by the Department of Veterans Affairs under solicitation No. 526-101-94. Allied alleges that Rutigliano is not a responsible contractor.

We dismiss the protest.

A determination that a bidder is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Neither situation exists in this case.

Even if this was an issue reviewable by our Office, it is untimely filed under our Bid Protest Regulations. 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). 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). Here, Allied initially filed its protest with the agency on July 15, 1994; the agency denied that protest on July 27. Allied pursued the matter with the agency on October 26 and again the agency denied its protest on October 31. Such continued pursuit with the agency does not extend the time period for filing with our Office. Beckman Instruments, Inc.-Recon., B-239293.2, June 22, 1990, 90-1 CPD ¶ 585. Thus, the instant protest filed here on November 14, more than 10 working days from the agency's July 27 denial of Allied's initial protest, is untimely.

  
Ronald Berger  
Associate General Counsel