



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

Decision

Matter of: Fluidtherm Corporation
File: B-260098
Date: January 30, 1995

DECISION

Fluidtherm Corporation protests the award of a contract to Procede'ne Corporation by the Department of the Navy under request for proposals No. N00164-94-R-0217 for a fluidized bed heat treating system.

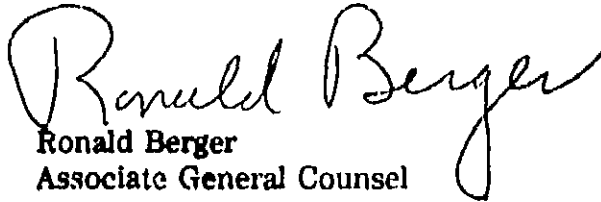
We dismiss the protest as untimely because it was filed more than 10 working days after the protester initially received actual or constructive knowledge of adverse agency action on its protest to the agency.

Fluidtherm filed an agency-level protest which was denied on October 25, 1994. Fluidtherm's protest to us was filed on January 20, 1995. 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). 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); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. Thus, since Fluidtherm obviously did not protest here within 10 days of receiving the Navy's denial of its agency-level protest, the protest filed here is untimely.

These 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.*

Fluidtherm acknowledges its lateness in filing its protest but requests that we review the matter anyway, in effect asking us to invoke one of the exceptions. These exceptions allow us to review untimely protests for good cause shown or where a protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(c). We see nothing in this protest that warrants invoking either exception.

The protest is dismissed.


Ronald Berger
Associate General Counsel