



Office of the General Counsel

B-231012

May 5, 1988

The Honorable Ike Skelton  
House of Representatives

Dear Mr. Skelton:

We refer to your letter dated March 28, 1988, in which you request that we consider a protest by Fairway Realty Service Company against the award of a contract by the Farmers Home Administration (FHA), United States Department of Agriculture, under request for quotations (RFQ) No. 60-64KY-8-C0007Q, for managerial services. As explained below, it is not appropriate for us to consider Fairway's protest because it is untimely.

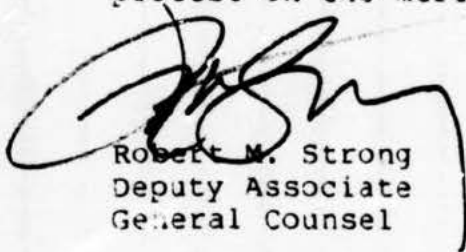
In the correspondence you provided, Fairway advises that it submitted a quote for the RFQ on November 23, 1987, but was notified by FHA on December 12, 1987, that the quote was not the lowest overall. Fairway further advises that in light of this information, it filed a protest with the agency on December 29, 1987, in which it challenged the agency's right to make award to a firm with allegedly less experience, qualifications and resources than itself. However, on March 3, 1988, FHA notified Fairway of award to another bidder, without resolving its protest.

Our Bid Protest Regulations provide that where a protest has been filed with the contracting agency, any subsequent protest to the General Accounting Office must be filed (meaning received in our Office) within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. See 4 C.F.R. § 21.2(a)(3) (1988). Further, the regulations define adverse agency action 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, including the award of a contract. 4 C.F.R. § 21.0(e).

Regarding Fairway's protest, we find that the notice FHA provided to Fairway on March 3 of award to another bidder constituted initial adverse agency action. Therefore, Fairway was required to file its protest within 10 working days from that date. However, we did not receive the letter of protest until March 31, 1988, which was more than 10 working days from Fairway's notice of initial adverse

agency action. Thus, we find that the protest is untimely. H.V. Allen Co., Inc., B-225326, et. al., Mar. 6, 1987, 87-1 CPD ¶ 260.

Our Regulations regarding timeliness apply regardless of the source of the protest, including those referred to our Office by Members of Congress. The bid protest process is more meaningful and effective when matters are timely brought to our attention. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress this would suggest to the procurement community that the timeliness provisions of our Regulations could be circumvented by submitting the protest through a Member of Congress. We therefore cannot consider the protest on the merits.



Robert M. Strong  
Deputy Associate  
General Counsel