

**Office of the General Counsel**

**B-230724.2**

March 30, 1988

Mr. Leonard Federico, President  
Federico Enterprises, Inc.  
dba Federico Helicopters  
2291 Airways Dr. Bldg. 420-A  
Fresno, California 93727

Dear Mr. Federico:

This is in response to your letter of March 21, 1988, protesting that the flight rates for the Sikorsky S-55T Helicopter included in invitation for bids (IFB) No. R5-88-19, issued by the United States Forest Service for helicopter services, are too low. We will not issue a decision on the merits of your protest, because we find that it is untimely.

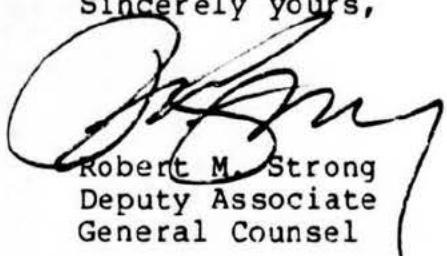
You initially filed a protest alleging this IFB deficiency with the Forest Service. Under our Bid Protest Regulations, when a protest is filed with the contracting agency first, a subsequent protest to our Office will be considered only if the agency-level protest was timely. 4 C.F.R. § 21.2(a)(3) (1987). Therefore, in order for our Office to consider your protest, you would have had to file a protest with the Forest Service before the date and time set in the IFB for submission of bids (March 4 at 2 p.m.) because your protest here alleges improprieties which were apparent from a reading of the IFB. 4 C.F.R. § 21.2(a)(1). However, your protest to the agency was not properly submitted to the Forest Service before bid opening and, therefore, was properly dismissed as untimely by the contracting agency.

The record shows that you submitted your protest to the Forest Service in the envelope provided to you as part of the Forest Service's bid package. The Forest Service has informed us that this envelope was clearly labeled to indicate that it contained a bid for this procurement for helicopter services. Thus, even though you submitted the envelope containing your protest to the contracting agency on the morning of March 4, the contracting officer, thinking it contained a bid, properly held the envelope with other similarly-marked bid envelopes and did not open it until after the 2 p.m. time set for bid opening. Since the

contracting agency cannot properly open and read materials that are submitted in a bid envelope until after the time set for bid opening, the protest cannot be considered as filed before bid opening. We have enclosed a copy of a recent decision issued by our Office on this very point.

Accordingly, since your protest to the Forest Service was untimely, we will not consider it further.

Sincerely yours,



Robert M. Strong  
Deputy Associate  
General Counsel

Enclosure

cc: Mr. DeAngelo  
U.S. Department of Agriculture  
1000 Independence Ave., S.W.  
Washington, D.C. 20585