

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-214733

DATE: April 11, 1984

MATTER OF: Don Strickland's Consultant and Advisory Service

DIGEST:

1. Where more than 3 weeks prior to bid opening date bidder requests that date be extended, is advised by contracting officer 3 days after request is made that it is denied, and then 1 month later--a week after bids have been opened--bidder files protest with GAO, protest is dismissed as untimely. If request made to contracting officer is considered initial protest, subsequent protest to GAO was not filed within 10 working days of adverse agency action. If initial protest is that to GAO, it is untimely, having been filed after bid opening.

2. Protest alleging that an IFB contains an unduly restrictive geographical limitation and that it should be set aside for small business is untimely when not filed prior to bid opening.

Don Strickland's Consultant and Advisory Service (Strickland) protests under invitation for bids (IFB) DAKF61-84-B-0014, for the lodging of military applicants. For the reasons stated below, we dismiss the protest as untimely.

The first basis of protest is that the contracting officer refused Strickland's request that the bid opening date be extended by 30 days. We understand Strickland to argue that the solicitation was defective in that it allowed insufficient time for the submission of bids.

Protests may be filed initially with the contracting agency and, if the agency acts adversely to the protest then to our Office, or directly with our Office in the first instance. In either event, under our Bid Protest

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Procedures, our Office will consider a protest of an alleged impropriety apparent from the face of an invitation for bids only if it has been filed prior to bid opening. See 4 C.F.R. § 21.2(b)(1) (1983). We require such protests to be filed by that time so that corrective action, if appropriate, may be taken prior to when bids are opened and competitors' prices exposed. Also in the interest of deciding these matters expeditiously, we require that when a protester has initially protested to an agency and the agency has acted adversely to the protest, any subsequent protest to our Office be filed within 10 working days of when the protester knew or should have known of the adverse agency action. See 4 C.F.R. § 21.2(a) and amendment at 48 Fed. Reg. 1931 (1983) to be codified at 4 C.F.R. § 21.2(b)(1).

Here, Strickland corresponded with the agency about an extension of the bid opening date, received an unfavorable reply, and then protested to our Office. Not having seen Strickland's letter to the agency, we do not know whether it would be more proper to regard it simply as a "request" for an extension, as Strickland states, or as a "protest." The nature of Strickland's correspondence affects the analysis we make of the timeliness of Strickland's protest. If Strickland's letter to the agency simply was a "request" and Strickland's initial protest was the one it filed with our Office, the question is whether the protest was filed prior to bid opening. On the other hand, if Strickland initially protested to the agency, was told its protest was denied, and then protested here, we must look to whether the initial protest to the agency was filed prior to bid opening and, if so, whether Strickland filed its subsequent protest here within the 10-day period our Bid Protest Procedures require. Although the analyses differ, under the facts of this case, the protest as to this issue is untimely in either event.

Strickland states that it requested an extension of the bid opening date by letter of February 21 and that it was orally advised by the contracting officer on February 24 that no extension would be granted. Strickland's letter of protest to our Office, although dated February 24, was postmarked March 19 and received by us on March 23. The date of filing with our Office, therefore, is March 23. See 4 C.F.R. § 21.1(b)(3). This is 1 week after the bid opening, which the agency advises us occurred on March 16.

If we assume that Strickland's February 21 letter to the contracting officer was not a protest, and that its first protest on this issue is the one it filed with us on March 23, it is untimely because it was not filed prior to bid opening.

On the other hand, if we assume that Strickland's February 21 letter to the contracting officer constituted a "protest," that protest was timely, having been filed well before bid opening. The contracting officer's advice of February 24 that no extension would be granted was action adverse to the protest. It then was incumbent upon Strickland to file any subsequent protest with our Office on that issue within 10 working days. Since its protest was not filed with us until approximately a month later, it is untimely.

In its protest to our Office, Strickland also maintains that the solicitation is unduly restrictive in that it contains an unreasonably narrow geographic restriction upon bidders offering these housing services and that the procurement should have been set aside for small business concerns. Since these bases for protest first were raised in Strickland's letter to our Office 1 week after bid opening, they are untimely and will not be considered. See Davlin Paint Company, B-214050, January 23, 1984, 84-1 CPD 105; ATE Associates, Inc., B-209007, September 27, 1982, 82-2 CPD 288.

The protest is dismissed.

for 
Harry R. Van Cleave
Acting General Counsel