



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

183

OFFICE OF GENERAL COUNSEL

B-219943

September 10, 1985

RELEASED

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The Honorable Earl Hutto
House of Representatives

Dear Mr. Hutto:

We refer to your letter of August 8, 1985, requesting that our Office review the protest of Edmonds Electric, Inc. (Edmonds), against the award of a contract for the ventilation of buildings at the Red River Army Depot, Texarkana, Texas, under invitation for bids (IFB) No. DAAG47-85-B-0069, issued by the United States Army. According to the correspondence, Edmonds was the low bidder, but the Army rejected Edmonds' bid as nonresponsive because it did not acknowledge a material amendment.

Edmonds contends that its bid was improperly rejected. Edmonds asserts that it never received the amendment and it therefore was unable to acknowledge the amendment. Edmonds further contends that although the amendment changed some wage rates, it did not change the wage rate for electricians and, since this contract would be performed entirely by electricians, the amendment would not have affected its bid price and, therefore, was immaterial.

We are unable to consider this matter on the merits, because it was untimely filed with our Office. Edmonds initially orally protested the rejection of its bid to the Army on June 27, 1985, and then followed that up by letter of July 3. The agency denied the protest by letter of July 10. Edmonds then, by letter of July 16, requested that the agency reconsider its denial of the protest, but apparently it has not received any response to that request. Your letter on behalf of Edmonds was filed with our Office on August 12.

Our Bid Protest Regulations require that where a protest has been filed initially with the contracting agency, any subsequent protest to this Office 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) (1985). Adverse agency action is defined 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(e) Moreover, the fact that the protester continues to pursue the matter with the agency does not extend the time for protesting to GAO. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44.

Here, in response to Edmonds' initial oral and written protests, the Army advised Edmonds that it determined that the bid was properly rejected. Since Edmonds obviously received the Army's denial by July 16, the date of its request for reconsideration by the agency, any subsequent protest to our Office had to have been filed within 10 working days of July 16. The fact that Edmonds requested reconsideration by the agency did not extend the time for protesting to our Office. Your letter requesting that our Office review Edmonds' protest, however, was not filed until August 12, approximately 4 weeks after the initial adverse agency action.

Our Regulations regarding the timeliness of protests apply regardless of the source of the protest, including protests filed by or referred to our Office by Members of Congress. In order for the bid protest process to be meaningful, our Office must have the opportunity to consider a protest while it is still possible to take effective action with respect to the procurement when the circumstances warrant it. It is therefore essential that we adhere to the timeliness requirements of our Regulations. 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 a protest through a Member of Congress.

While section 21.2(c) of our Regulations provides that, for good cause shown or where there are issues significant to the procurement system, our Office may consider any protest which is not timely filed, we do not find these exceptions applicable here. See Jarrett S. Blankenship Co.,

B-219943

3

B-211139 ~~X~~ Apr. 13, 1983, 83-1 C.P.D. ¶ 401. Therefore, this protest cannot be considered on the merits.

For your information, we enclose a copy of our publication, Bid Protests At GAO A Descriptive Guide, which contains a copy of our Bid Protest Regulations and information concerning GAO's bid protest function.

Sincerely yours,

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

Enclosure