



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** E.J. Riley, Inc.  
**File:** B-259109  
**Date:** February 28, 1995

### DECISION

E.J. Riley protests its alleged exclusion from competition for the award of a subcontract (Contract No. 75WK66914MX) for records management support by Westinghouse Waste Isolation Division of Westinghouse Electric Corporation, a prime contractor for the Department of Energy (DOE). We dismiss the protest as untimely filed.

Westinghouse serves as the prime contractor at DOE's Waste Isolation Pilot Plant near Carlsbad, New Mexico, under a Performance Based Management Prime Contract (formerly a management and operating contract). Riley performed records management services under two subcontracts that were awarded by Westinghouse, which were completed in August and September 1994.

In July, DOE requested that Westinghouse submit a proposal for extending its prime contract. In anticipation of preparing its proposal, Westinghouse decided to enter a contractor teaming arrangement with Day & Zimmerman, a firm that offered security services and records management capabilities. The two firms executed a memorandum of understanding, agreeing to negotiate a subcontract under which Day would perform certain services under Westinghouse's prime contract, if extended. Westinghouse submitted its proposal to DOE, identifying Day as its team partner and prospective subcontractor.

On September 1, Westinghouse requested a proposal from Riley for two change notices to accomplish additional work under the subcontract that Riley was then in the process of completing. On September 9, the request for proposals was revised, increasing the scope of work from the previous change notices.

On September 12, Westinghouse awarded to Day & Zimmerman the records responsibility under the teaming arrangement, as of October 1. The protest report that Westinghouse submitted states that Riley was informed "sometime between September 12 and September 15" that Day would be assuming

the records responsibility from Westinghouse, and that Riley inquired whether Day would subcontract the work under the two change orders to Riley. Westinghouse states that during the week of September 26, Riley was notified by phone that the proposed work would not be performed, and that the change notices had been canceled.

In its protest, Riley initially asserted that it first became aware on October 11 that it would not be continuing to perform records management support and that the work would be performed by another firm. However, in its comments responding to Westinghouse's report, the protester states, "[Riley] did not receive anything in writing from [Westinghouse] until October 17, 1994, which is very untimely relative to [Westinghouse] verbal notification of September 26, 1994--a lapse period of 16 days."

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1994), require that a protest, other than a protest of an apparent solicitation impropriety, be filed within 10 working days after the basis of the protest is known, or should have been known, whichever is earlier. Brigham Young Univ., B-241887, Dec. 13, 1990, 90-2 CPD ¶ 488. In this regard, a protester's receipt of oral information forming the basis of its protest is sufficient to start the 10-day time period running; written notification is not required. Id. Here, the record shows that Riley received oral notice of the award to Day on September 26; its protest therefore had to be filed by October 11 in order to be considered timely. Since it did not file its protest in our Office until October 25, it is untimely and will not be considered.



Michael R. Golden  
Assistant General Counsel