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DECISION



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

FILE: B-206112

DATE: February 4, 1982

MATTER OF: Spectrum Leasing Corporation

DIGEST:

1. Protest not filed within 10 days after basis of the protest is known is untimely and will not be considered by GAO.
2. When protest is timely filed initially with contracting agency, subsequent protest filed with GAO more than 10 working days after initial adverse agency action is untimely.

Spectrum Leasing Corporation (Spectrum) protests the Department of the Treasury's (Treasury) award of a sole-source purchase order for nine computer control units to International Business Machines (IBM). The protester asserts that its firm could have satisfied Treasury's requirements, and the decision to award to IBM without competition, therefore, was improper.

This protest is untimely and will not be considered on the merits.

On October 22, 1981, Treasury published a notice in the Commerce Business Daily (CBD) of its intent to place a delivery order with IBM for initial delivery by November 15, 1981. This notice referenced Note 46, published in the CBD on the first CBD publication day each week, which states that the "synopsis [is] published for informational purposes only. Solicitation documents are not available."

Spectrum's protest letter to GAO, received on January 18, 1982, includes a copy of a letter to Treasury dated October 28, 1981, in which Spectrum, specifically referring to the CBD notice, offered its equipment to Treasury at a price below that listed by IBM in its Federal Supply Schedule contract and requested details concerning Treasury's precise requirements. In a letter

dated November 27, 1981, Spectrum was advised by Treasury that the CBD synopsis was issued for informational purposes, that solicitation documents were not available and that Spectrum would not be considered for this procurement. In a subsequent letter to Treasury dated December 22, 1981, Spectrum acknowledged receipt of Treasury's November 27 letter and asked for further consideration by Treasury of its offer.

If Spectrum's letter of October 28, which offered to fulfill Treasury's computer control unit requirement, is not considered as a protest, the letter to GAO received on January 18, 1982, constituted the initial protest and clearly is untimely filed. In its October 28, 1981, letter to Treasury, Spectrum specifically referenced the CBD notice and, therefore, at least as of that date, the protester knew the basis of its protest, that is, the sole-source award to IBM. Our bid protest procedures require that a protest be filed with the GAO within 10 days after the basis of the protest is known. 4 C.F.R. § 21.2(b)(2) (1981). Consequently, Spectrum's protest of January 18, 1982, was untimely filed. Security Assistance Forces and Equipment OIG, B-201463, January 6, 1981, 81-1 CPD 11.

Alternately, if we consider Spectrum's letter of October 28, 1981, as a timely protest to the agency, the subsequent protest filed with GAO is untimely. Our Procedures require that when a protest is initially timely filed with a contracting agency, any subsequent protest to this Office must be filed within 10 days of notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a).

In its letter of November 27, 1981, Treasury indicated that Spectrum would not be considered for award and this letter constituted notice of initial adverse agency action. The 10-day requirement for a timely protest to our Office is not affected by the protester continuing to pursue the matter with the contracting agency, as apparently happened here (Spectrum's December 22, 1981, letter to Treasury), once notice of initial adverse agency action is received by the protester. International Logistics Group, Ltd., B-202819, May 19, 1981, 81-1 CPD 386. Thus, Spectrum had actual notice of the agency's initial adverse action, at the latest, by December 22,

1981, since its letter of that date acknowledged receipt of the November 27 letter from Treasury. Accordingly, its protest received by GAO on January 18, 1982, is beyond the 10-day filing requirement and the protest is untimely.

We dismiss the protest.

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