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DECISION



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

FILE: B-202423

DATE: April 16, 1981

MATTER OF: The Land Group of Salt Lake City

DIGEST:

Claim for proposal preparation costs is dismissed where consideration of claim would require GAO to consider untimely raised issue in circumvention of GAO's Bid Protest Procedures.

The Land Group of Salt Lake City (Land Group) requests reimbursement for its proposal preparation costs under request for proposals (RFP) No. WASO-80-8 issued by the National Park Service (NPS), Department of the Interior.

According to its initial submission, the Land Group mailed its proposal package by express mail service on September 17, 1980. The RFP specified that NPS had to receive all proposals no later than 3 p.m. on September 18, 1980. The United States Postal Service had assured the Land Group that its proposal would be delivered prior to 3 p.m., on the 18th. However, on October 3, 1980, NPS notified the Land Group that its proposal would not be considered since the time-date stamp on the package showed that it had been received at 4:15 p.m., or more than an hour after the deadline set for the receipt of proposals. By letter dated October 8, 1980, counsel for the Land Group filed a protest with NPS stating that they had learned from the Postal Service that the Land Group proposal had been delivered to the agency's mailroom at 7:15 a.m., on September 18, 1980. This letter further stated that upon obtaining a legible copy of the Postal Service receipt, counsel for the claimant would again be in contact with NPS. A timeframe of approximately 2 weeks was mentioned.

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The Postal Service sent the claimant's counsel a letter dated November 4, 1980, which stated that the proposal package had been delivered on September 18, 1980, at 7:15 a.m., and named the person who delivered the package and the one who received and signed for it. However, the claimant's counsel made no further contact with NPS until a letter dated January 19, 1981. In that letter, the claimant's counsel forwarded a copy of the Postal Service letter and requested guidance on what to do next. No further action was apparently taken by either party until the claimant filed the present claim with our Office on March 9, 1981.

Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1980), states in pertinent part:

"Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 [working] days of formal notification of or constructive knowledge of initial adverse agency action will be considered * * *."

As indicated above, the Land Group did initially file a protest with NPS, but in its protest it also stated that additional information would soon be following. However, the Land Group did not communicate with NPS again for more than 3 months. This delay occurred even though the information requested from the Postal Service was received only a month after the protest had been filed with NPS.

While there is no indication that NPS ever denied the Land Group's protest, we believe that any protest to our Office at this point would be untimely because the Land Group failed to pursue its protest with the agency in a diligent manner. Wyatt Lumber Company, B-196705, February 7, 1980, 80-1 CPD 108. Upon receipt of the Postal Service's letter of November 4, 1980, the Land Group should have forwarded this information to NPS and requested a decision on the protest.

If NPS had then denied the protest, the Land Group's next step should have been to file a protest with our Office. 4 C.F.R. § 20.2(a), supra. Its failure to follow this course of action shows a lack of diligent pursuit and, therefore, would render any subsequent protest to our Office untimely.

The Land Group has not in fact protested the rejection of its proposal to our Office, but rather has filed a claim for proposal preparation costs. In this connection, we have held that where consideration of a claim for proposal preparation costs would involve the consideration of the same issues raised in an untimely protest, we will refuse to consider the claim since to do otherwise would circumvent the timeliness requirements of our Bid Protest Procedures. Mr. Henry R. Stevenson, B-198071, March 26, 1980, 80-1 CPD 224. Consequently, we will not consider the Land Group's claim since to do so would require us to consider the same issue we have already determined to be untimely--that is, whether NPS was correct in rejecting the Land Group's apparent late proposal.

Claim dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel