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DECISION



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

B-221523.2

FILE:

DATE: February 20, 1986

MATTER OF:

Auburn Timber, Inc.--Request for
Reconsideration

DIGEST:

1. Oral notification of basis for protest is sufficient to start 10-day period for filing protest running and protester may not delay filing protest until receipt of written notification of protest basis.
2. Where protest is not timely filed with contracting agency under General Accounting Office Bid Protest Regulations, subsequent protest filed with General Accounting Office is untimely.
3. Contracting agency may not waive General Accounting Office timeliness rules, which may be waived only in instances, not here applicable, set forth in Bid Protest Regulations.

Auburn Timber, Inc. (Auburn), requests that we reconsider our dismissal of its protest against the cancellation of the Mt. Baker-Snoqualmie National Forest Dry Ranger timber sale by the United States Forest Service (White River Ranger District). We dismissed the Auburn protest as untimely filed with our Office under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985). Auburn contends that it was misadvised by the contracting agency as to the correct appeal procedures and notes that the agency has stated that it is willing for the purposes of this protest to accept a waiver of our timeliness requirements.

We affirm the dismissal.

The sale was canceled because it was decided that the Final Environmental Impact Statement for the Regional Guide for the Pacific Northwest Region, whose guidelines for the

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management of the northern spotted owl habitat governed the Dry Ranger sale, needed to be supplemented by incorporating the latest scientific information applicable to the management of the habitat. On September 27, 1985, 9 days after the sale, Auburn was orally informed that all bids were rejected due to concerns regarding the management guidelines. Formal notification of the rejection of all bids was given Auburn by an agency letter of October 29. Auburn was incorrectly advised that it could appeal the decision within 45 days pursuant to 36 C.F.R. § 211.18 (1985) ("Appeal of decisions of forest officers [concerning the National Forest system]"), which in fact is not applicable to this situation. Auburn's appeal to the agency was rejected by letter of December 10, received by Auburn on December 13, because the appeal procedure did not apply. Auburn's subsequent protest to our Office was received on December 30.

Our Bid Protest Regulations state that where the initial protest has been filed with the contracting agency a protest to our Office, even if filed within 10 working days after formal notification of initial adverse agency action, will be considered only if the initial protest to the agency was filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(3).

Oral notification of the basis for protest is sufficient to start the 10-day period for filing a protest running and a protester may not delay filing its protest until receipt of written notification of the protest basis which merely reiterates the basis of protest originally orally learned. Koenig Mechanical Contractors, Inc., B-217571, Apr. 4, 1985, 85-1 CPD ¶ 389. Since Auburn did not file its protest with the agency until after it received formal written notification that all bids had been rejected, even though it had been orally notified of this more than a month previously, the Auburn protest to the agency was untimely filed under our Bid Protest Regulations. Thus, the protest subsequently filed with our Office is also untimely.

As for the agency's willingness to accept a waiver of our timeliness requirements, apparently due to the incorrect advice it gave the protester, we find the protest untimely not because of the protester's reliance on the Forest Service's advice, but because no protest was filed at all until well after Auburn was on notice of the basis of protest. Moreover, the timeliness requirements of the Bid Protest Regulations may be waived only in instances, not here applicable, set forth at 4 C.F.R. § 21.2(c) and may not be waived by the agency. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 CPD ¶ 44.

Harry R. Van Cleve

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General Counsel