

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

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FILE: B-213999**DATE: April 9, 1984****MATTER OF: JT Systems, Inc.****DIGEST:**

Protest of failure of agency to apply negotiated procurement procedures to advertised procurement filed more than 10 days after protester learned that such procedures would not apply is dismissed as untimely.

JT Systems, Inc. (JT), protests the refusal of the Veterans Administration (VA) to apply negotiated procurement procedures under solicitation No. 528-56-83, a total small business set-aside for hot water tube bundles.

We dismiss the protest as untimely.

Although the solicitation was labeled a negotiated procurement, the procurement was conducted as a formally advertised procurement with a public bid opening. (The VA has advised that procedures will be developed to prevent a recurrence.)

Prior to the expiration of the original bid acceptance period on November 28, 1983, VA requested 30-day extensions of all bidders. JT increased its bid as a condition for its extension. The JT bid was rejected, according to a sworn affidavit from the contracting officer, after she telephoned the president of JT on December 5, 1983, and advised him that JT could not change its price. JT asserts that its revised "offer" was improperly rejected because the VA's request for extension constituted the reopening of negotiations; therefore, JT should have been permitted to modify its price.

The VA asserts that the protest is untimely because JT was advised of the grounds which formed the basis of its protest on December 5, 1983, and JT's protest was not filed (received) in GAO within 10 days. We note that JT's protest was filed in our Office on December 23, 1983.

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The protester asserts that it was not advised until a phone call from the contracting officer on December 14, 1983, that award was made to another firm and that on December 15, 1983, the contracting officer sent JT a copy of certain provisions from the Federal Procurement Regulations. However, other than a general assertion that the VA report contains "lies," the protester does not deny or contradict the VA's statement that the contracting officer called JT on December 5 and advised it as indicated above. Rather, JT implies that it did not know its basis for protest until it was advised that award had been made to another bidder.

We find this argument without merit. Nowhere does JT indicate that it intended to extend its bid at the original price, nor does it indicate that it would have accepted the contract at the original, lower price. Rather, JT's protest is directed at VA's determination that JT's price could not be modified. JT was specifically advised of this by the VA on December 5, as shown by the uncontradicted affidavit of the contracting officer. Since JT's protest was not filed in our Office until more than 10 days thereafter, the protest is untimely. See Universal Design Systems, Inc.--Reconsideration, B-211547.2, June 28, 1983, 83-2 CPD 41.

JT also assumes improperly that its protest was "filed" on December 16, because that is the indicated mailing date of its submission. As provided for in our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(3) (1983), for purposes of ascertaining timeliness of protests, "filed" means receipt in our Office and does not refer to the mailing date except in circumstances inapplicable here.

JT has claimed bid preparation costs and lost profits. With respect to alleged lost profits, there is no legal basis for allowing any unsuccessful bidder to recover anticipated profits, even if the claimant is wrongfully denied a contract. DaNeal Construction, Inc., B-208469, December 14, 1983, 83-2 CPD 682. We need not address the claim for bid preparation costs in view of our determination that the protest is untimely, since we only consider such a claim in connection with a timely protest. Builder's Security Hardware, Inc., B-213599, December 7, 1983, 83-2 CPD 659.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel