



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

MAY 14 1973

308-94

B-177721 (1)

Dalux Inc.
P.O. Box 667
Rockville, Maryland 20851

Attention: Mr. N. Marmel

Gentlemen:

We are in receipt of letters dated December 25, 1972, January 30 and February 27, 1973, from you and your principal, Quality Outdoor Lighting, Inc. (Quality), protesting the action of the Bureau of Prisons with regard to invitations for bids 2-9184 and 2-9222.

After award was made to Electrical Wholesalers under invitation 2-9184, the contracting agency canceled the contract and resolicited the procurement under invitation 2-9222, dated June 30, 1972, because of a determination that the original specifications were proprietary. Only after Quality had participated in the new solicitation and was unsuccessful in obtaining an award thereunder did you, as an authorized representative of Quality, protest by letter of December 25, 1972, to our Office the cancellation of the original invitation and the resolicitation.

Since section 20.2(a) of the Interim Bid Protest Procedures and Standards provides that " * * * bid protests shall be filed not later than 5 [working] days after the basis for protest is known or should have been known, whichever is earlier," we must conclude that the protest filed 6 months after the resolicitation was issued is untimely.

The protest against the determination that Quality was nonresponsive under invitation 2-9222 also is untimely. The award was made to the next low bidder on September 13, 1972. The contract provided for delivery in 12 to 14 weeks after award (December 6 to 20, 1972). A September 15, 1972, letter of protest from Quality against the award was received by the agency within the 5-day period prescribed by section 20.2(a) of the Interim Bid Protest Procedures and Standards. The protest was repeated in a second letter of September 20, 1972, to the agency which requested advice as to the forms to be utilized to process the protest. Neither of these letters was answered by the contracting agency. However, subsequent to the September 20, 1972, letter, no effort was made until more than 3 months later to protest to our Office.

[Untimely Protest of Resolicitation]

PUBLISHED DECISION
52 Comp. Gen. _____

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Section 20.2(a) provides that a " * * * protest to the General Accounting Office filed within 5 [working] days of notification of adverse agency action will be considered provided the initial protest to the agency was made timely." We have held that "adverse agency action" may consist of a procurement action such as the award of a contract despite the pendency of a protest. 52 Comp. Gen. 20, 22 (1972). Similarly, the contracting agency's acquiescence in and active support of continued and substantial contract performance also may constitute adverse agency action. A protestant will be charged with notification of this adverse action when he has reason to know that the agency has permitted the contract to be performed substantially toward completion.

Quality's protest to our Office after the date set for completion of the contract is not timely under these standards and procedures. Quality should have protested to our Office promptly when its letters to the agency were ignored and when contract performance was proceeding to a point where our Office would be unable to grant any meaningful relief.

In 52 Comp. Gen., supra, our Office held that the purpose of section 20.2(a) is to provide a means by which " * * * protests may be expeditiously resolved at a stage in the procurement when some effective remedial action may be taken on meritorious protests." In that connection, it was stated: " * * * The intent of this provision [20.2(a)] also is to secure the resolution of the matter when some meaningful relief may be afforded, not--as in this case--after the contract is completely performed."

Accordingly, we are closing our file on the matter today without any consideration of the protest.

Sincerely yours,

Paul G. Dombing

For the
Comptroller General
of the United States