



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-205071

November 5, 1981

The Honorable Dave McCurdy
House of Representatives

Dear Mr. McCurdy:

Do not take available to public reading

This in reply to your correspondence of September 28, 1981, regarding our jurisdiction over the questions raised by your constituents, Mr. Richard Holcomb and Mr. Lawrence Metzger, concerning procedures under which the Tulsa District Corps of Engineers, Department of the Army (Army), awarded a contract for lease of Army real property for harvesting hay on the Fort Sill Military Reservation, Oklahoma.

We are unable to consider this matter on the merits because your constituents' protest is untimely filed. Bids were opened on April 14, 1981. By letter of July 27, 1981, your Norman, Oklahoma, office forwarded a letter of protest from your constituents' counsel to the Army. On August 12, 1981, the Army responded to both your Norman, Oklahoma, and Washington, D.C., offices. Your constituents' protest was not filed with our Office until October 2, 1981.

Our Bid Protest Procedures require that protests initially filed with the contracting agency will only be considered by our Office if they are filed within 10 working days of the protester's learning of initial adverse agency action. 4 C.F.R. § 21.2(a) (1981). Under the circumstances, the Army response of August 12, 1981, stating that the award would stand, despite the allegations of collusive bidding, constituted initial adverse agency action.

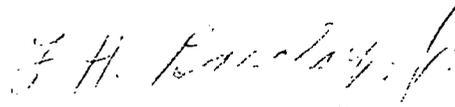
Concerning the applicability of our Procedures to protests filed by or referred to our Office by Members of Congress, it has been decided that no protest will be considered on its merits if untimely filed, unless one of the exceptions in section 21.2(c), *infra*, is applicable regardless of the source of the protest. This policy was adopted because our Office can best function if it is permitted to decide an issue while

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it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time for the filing of a protest. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this would suggest to the procurement community that the timeliness provisions of our Procedures could be circumvented by submitting the protest through a Member of Congress.

While section 21.2(c) of our Procedures provides that for good cause shown or where there are issues significant to procurement practices or procedures, our Office may consider any protest which is not timely filed, we do not find these exceptions applicable here. See 52 Comp. Gen. 821 (1973). Therefore, the protest will not be considered on the merits.

Sincerely yours,



For Harry R. Van Cleve
Acting General Counsel