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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Crown Support Services, Inc.

File: B-287070

Date: January 31, 2001

George R. Mead, II, Esq., Clark, Partington, Hart, Larry, Bond & Stackhouse, for the protester.

Sandra D. Jumper, Esq., Naval Supply Systems Command, for the agency.

Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest presenting argument raised in appeal under Office of Management and Budget Circular No. A-76 is untimely where filed with the General Accounting Office more than 10 days after contracting agency denied protester's appeal. While the protest was filed within 10 days of cancellation of the underlying solicitation, cancellation was merely implementation of the denial of the appeal.

DECISION

Crown Support Services Inc. protests the Department of the Navy's decision, pursuant to Office of Management and Budget (OMB) Circular No. A-76, that it would be more economical to perform the Navy Northwest Region Personal Property Services function in-house rather than to contract for these services with Crown under solicitation No. N00406-00-R-5012.

We dismiss the protest as untimely filed.

On September 29, 2000, Crown received notice that the Navy's cost comparison had resulted in a determination that in-house performance under the government's most efficient organization (MEO) would be less costly than contracting with Crown, whose proposal the agency had previously determined represented the best value under a solicitation issued to obtain private-sector competition to select a proposal for cost comparison with the government's MEO. Crown timely filed an administrative appeal protesting that the cost comparison was flawed because, among other things, the MEO improperly utilized group counseling rather than individual counseling for certain services required under the applicable performance

work statement (PWS). Although the administrative appeal authority found certain other errors in the agency's cost comparison, he explicitly determined that group counseling was permitted and was acceptable under the PWS, and concluded that correction of the other errors did not result in a cost adjustment sufficient to warrant reversal of the determination that it was more economical to perform the services in-house. As a result, by decision dated December 21, 2000, the administrative appeal authority denied Crown's appeal. It is uncontroverted that Crown was provided with a copy of this adverse decision on the same date.

Thereafter, Crown's president states that, after encountering difficulty in contacting agency representatives, he eventually engaged in a telephone conversation with the Navy's contracting officer. During this conversation, Crown's president allegedly stated that his company was going to file a protest with the General Accounting Office if the solicitation was canceled, and allegedly was misled by the contracting officer because she did not advise Crown of the effect of the appeal authority decision for purposes of timely filing that protest. After the Navy issued an amendment canceling the solicitation, Crown filed this protest with our Office on January 10, 2001.

In implementing the requirements for an A-76 cost comparison using a negotiated solicitation, Federal Acquisition Regulation (FAR) § 7.306(b)(2) provides that where a cost comparison with a selectee's proposal results in a determination in favor of government performance, there is a public review period during which interested parties have the right to seek administrative review of the cost comparison determination through an appeals procedure as set forth in FAR § 7.307. After the public review period and upon notice to the contracting officer if there is an adverse resolution of any appeal, FAR § 7.306(b)(3) requires that the contracting officer formally implement a decision to perform the work in-house by canceling the solicitation. An A-76 cost comparison decision is considered final, however, as soon as the administrative appeal procedures have been exhausted. See Trans-Regional Mfg., Inc., B-245399, Nov. 25, 1991, 91-2 CPD ¶ 492 at 3.

Our Office will consider a protest alleging A-76 cost comparison deficiencies after the protester has exhausted the agency's administrative appeal process, and only with respect to objections that have been raised in the appeal to the agency. Id. In determining the timeliness of a post-appeal protest, we apply the timeliness rule applicable to protests filed with our Office after adverse agency action on an agency-level protest. Under our Bid Protest Regulations where a protest is first filed with the contracting agency, a subsequent protest to our Office, to be considered timely, must be filed within 10 calendar days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (2000). Notwithstanding the protester's position that the cost comparison somehow was not finally determined until the contracting officer issued amendment No. 5 quantifying the cost adjustment to the MEO resulting from the administrative appeal authority's decision and canceling the solicitation, it is settled that the administrative appeal authority's decision denying a protester's appeal constitutes initial adverse agency action for purposes of

determining the timeliness of an A-76 cost comparison protest to our Office. Cumberland Sound, Inc., B-248014.2, Aug. 21, 1992, 92-2 CPD ¶ 117 at 2-3; Space Age Eng'g, Inc., B-230148, Feb. 19, 1988, 88-1 CPD ¶ 173 at 2. Accordingly, Crown's protest to our Office, which was filed more than 10 days after Crown's receipt of that decision, is untimely and is not for consideration on the merits.¹

The protest is dismissed.

Anthony H. Gamboa
Acting General Counsel

¹ To the extent that Crown contends that it was somehow misled regarding the timeliness requirements during its telephone conversation with the contracting officer, alleged oral advice from a government official which is contrary to our timeliness regulations may not serve as a basis to waive those requirements. Lockheed, IMS, B-248686.3, July 23, 1993, 93-2 CPD ¶ 69 at 6; oral advice from a contracting officer does not bind the government and an offeror relies on such advice at its own risk. New Zealand Fence Sys.; Dept. of the Interior--Request for Advance Decision, B-257460, Sep. 12, 1994, 94-2 CPD ¶ 101 at 3 n.2.

Crown also requests, in the alternative, that our Office invoke either the "significant issue" or "good cause" exception to our timeliness requirements. 4 C.F.R. § 21.2(c) (2000). We decline to do so. The significant issue exception is limited to untimely protests raising issues that have not been considered on the merits in a prior decision and that are of widespread interest to the procurement community. Oahu Tree Experts, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69 at 3 n.2. The issue presented here concerning the propriety of the scope of the work used for purposes of the MEO cost estimates does not fall within the significant issue exception because it is an issue which our Office has frequently and routinely considered in reviewing A-76 cost comparison protests. Further, the appropriateness of the agency's interpretation of the specific PWS provision at issue here is not of widespread interest to the procurement community. As for the good cause exception, it applies only where some compelling reason beyond the protester's control prevented it from timely submitting its protest. Wilderness Mountain Catering, B-280767.2, Dec. 28, 1998, 99-1 CPD ¶ 4 at 6 n.6. No such circumstances are present here.