

Avaltroni, Robert

From: Resnick, Risa
Sent: Wednesday, May 22, 2002 11:57 AM
To: Erdfarb, Stuart
Cc: Schiano, Frank; Fenves, Carol; Nudelman, Harold; Gilsenan, Michael (ex); Avaltroni, Robert; Smyth, Virginia; Kelpin, Gerry
Subject: RE: EMIPA's protest?

Here's my first draft - please review and advise.
 Thanks much!



EMIPAPRO.WPD

-----Original Message-----

From: Erdfarb, Stuart
Sent: Wednesday, May 22, 2002 9:28 AM
To: Resnick, Risa
Cc: Schiano, Frank; Fenves, Carol; Nudelman, Harold; Gilsenan, Michael (ex); Avaltroni, Robert; Smyth, Virginia; Kelpin, Gerry
Subject: RE: EMIPA's protest?

you should speak to Mark and Frank and draft a response that says that there is no appeal of a denial of protest. His remedy is in the courts. Further, we could have dismissed the initial protest because it was late and misdirected, but chose to respond because that was the "right" thing to do.

-----Original Message-----

From: Resnick, Risa
Sent: Tuesday, May 21, 2002 4:06 PM
To: Erdfarb, Stuart; Fenves, Carol; Nudelman, Harold
Cc: Schiano, Frank
Subject: EMIPA's protest?

I read through the 2nd appeal of the denial of the protest on 1081-AQMS. What should we do about this? His argument is that the first denial and appeal upholding was "partial" b/c they were waiting for FOIL documents and he therefore argues that this is timely. Aside from the obvious silliness of this argument, do we again need to address each allegation or is an overall "you already had your bite at the apple" sufficient. Harold, if you haven't seen this, I'll send a copy to you.

Risa A. Resnick, Esq.
 Assistant Counsel
 New York City Department of Environmental Protection
 Bureau of Legal Affairs
 59-17 Junction Blvd., 19th Floor
 Flushing, New York 11373
 718-595-6606
risar@dep.nyc.gov

May 22, 2002

Lawrence R. Mulligan
Attorney-at-Law
Cornerstone Professional Park
39 Sherman Hill Road
P.O. Box 1187
Woodbury, Connecticut 06798

Re: Contract 1081-AQM
North River Air Quality Monitoring System
Second Appeal of Protest Denial

Dear Mr. Mulligan:

I am in receipt of your letter of May 17, 2002 submitted on behalf of your client, EMIPA, Inc., which you purport to be a "final protest" relating to the above-referenced Contract.

On December 12, 2001, you submitted a letter of protest to the Office of Contract Administration of the New York City Comptroller. At such time, you were advised that such protests are to be submitted to the Agency Head, with copies to the Comptroller and Agency ACCO, and must be submitted "within ten days after the protesting supplier knows or should have known of the facts that prompted the protest but no later than ten days after publication of the notice of award." Procurement Policy Board Rules §2-10(a)(1). Two months later, on February 4, 2002, you submitted a letter protest to me as the authorized delegate of the Agency Head. Notwithstanding the fact that I could have dismissed the February 4, 2002 protest as it was objectively untimely, I chose to respond to your protest on the merits. Your argument that your client's protest was "continuing" and your unilateral attempt to extend the time for appeal based on awaiting receipt of documents requested via the Freedom of Information Law are baseless.

Please be advised that there is no further administrative appeal available. Pursuant to Procurement Policy Board Rules §2-10(a)(3), "[t]he Agency Head's determination shall be final." As such, my determination of March 1, 2002 denying your client's protest stands.

Very truly yours,

Diana Chapin
First Deputy Commissioner

c: Avaltroni, Erdfarb, Fenves, Gilsenan, Kelpin, Nudelman, Resnick, Schiano, Smyth