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DECISION

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

FILE: B-208002.2 DATE: August 17, 1982

MATTER OF: Aunyx Manufacturing Corporation
-- Reconsideration

DIGEST:

1. Where request for reconsideration fails to present facts or legal arguments which show that previous decision dismissing protest as untimely was erroneous, request for reconsideration is denied.

2. Fact that letter from General Services Administration rejecting protester's request that late offer be considered was addressed to official of protester who was on military leave, and was not opened until official returned, is not relevant on question of timeliness of firm's protest to this Office. Notice to firm addressed to official therein is same as notice addressed to firm and decision not to open official's mail is a matter of business judgment which does not relieve protester of obligation to file protest in timely manner.

Aunyx Manufacturing Corporation (Aunyx) requests that we reconsider our decision in Aunyx Manufacturing Corporation, B-208002, July 7, 1982, 82-2 CPD ___, in which we dismissed as untimely Aunyx's protest of the rejection of its offer, by the General Services Administration (GSA), under solicitation No. FCGE-M8-75227-N-2-16-82. For the reasons that follow, the request is denied.

GSA rejected Aunyx's offer because it was received after the closing date for receipt of proposals. Moreover, Aunyx could not show that its offer was sent by registered or certified mail not later the the fifth calendar day prior to the date set for receipt of offers, as required by the solicitation if a late offer in to qualify for consideration.

Aunyx' protest to this Office was dismissed because we found that it had been notified by GSA of the rejection of its offer by letter dated May 25, 1982, but had not filed its protest here until June 23, 1982. Therefore, under our Bid Protest Procedures, Aunyx's protest was untimely because it was not filed with our Office within 10 days of when the basis for protest was, or should have been, known.

In its request for reconsideration, Aunyx reiterates the arguments it made in its initial protest. In addition, Aunyx advises that its Government Sales Coordinator, to whom GSA's May 25 letter was addressed, was away on military leave serving with the Massachusetts National Guard when the letter was received. Aunyx further states that upon his return on June 14, 1982, the coordinator opened the letter, and, since Aunyx's protest was filed on June 23, 1982, this was within the 10-day period prescribed by our procedures. Therefore, Aunyx argues, we should consider its protest to have been timely filed. We disagree.

The record indicates that on April 6, 1982, GSA sent a letter to Aunyx advising it that the firm's offer would not be considered for award because it had been received late. On April 21, 1982, Aunyx' Government Sales Coordinator wrote GSA, urging that the offer be considered because it had been mailed (in two envelopes) five days prior to the date set for receipt of offers, as evidenced by two "Certificates of Mailing" provided Aunyx by the Postal Service. In his response of May 25, GSA's contracting officer took the position that a "Certificate of Mailing" was not the equivalent of certified or registered mail which, under the terms of the solicitation, was required to be used if a late mailed offer was to be considered. The contracting officer concluded that he had no authority to waive this requirement of the solicitation and, therefore, Aunyx' late offer could not be considered.

This exchange of correspondence could be characterized in two different ways, under each of which Aunyx' protest to our Office would be untimely. Aunyx' April 21 letter could be construed as a "protest" to GSA's contracting officer, and the latter's May 25 response as the "initial adverse agency action" upon the protest. Alternatively, Aunyx' April 21 letter could be read as providing information to GSA bearing on the acceptability of the

company's late bid, and GSA's May 25 letter as formal notification that Aunyx' bid would not be considered and the reasons therefor, which would, of course, be the "basis for protest" to our Office. We think the latter view is more consistent with the correspondence.

Whether GSA's May 25 letter is viewed as adverse action upon an existing protest to the agency or simply as providing the factual basis for the protest to our Office, under our Bid Protest Procedures, the protest was required to be filed within 10 working days of its receipt by Aunyx. Aunyx argues it did not "receive" GSA's letter until June 14 because the company did not open the mail of its Government Sales Coordinator during the two weeks he was on reserve duty. For the purposes of our timeliness rules we can see no difference between such notice addressed to the firm itself and notice addressed to the firm through its agent. We also do not consider favorable to Aunyx' position the fact that GSA's letter remained unopened for the time that the official was on military leave, since the decision not to have someone open mail for Aunyx addressed to this official represents a matter of business judgment.

Since the request for reconsideration does not advance facts or legal arguments that show that our earlier decision was erroneous, the request is denied. Schindler Haughton Elevator Corporation--Reconsideration, B-200965.2, August 12, 1981, 81-2 CPD 127.

Aunyx has requested a conference in connection with its request for reconsideration. Our Bid Protest Procedures do not provide for conferences in this situation. We believe a conference should be granted in connection with a request for reconsideration only where the matter cannot be resolved without one. In this case, we believe a conference would serve no useful purpose. Porta Power Pak, Inc. -- Reconsideration, B-196218.2, July 17, 1980, 80-2 CPD 38.

for Milton J. Socolar
Comptroller General
of the United States