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DECISION



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

FILE: B-218007.3

DATE: March 8, 1985

MATTER OF: Penney's Gemstones--Reconsideration

DIGEST:

Protester seeks second reconsideration of dismissal of untimely protest on the basis that its first request for reconsideration showed that it might have been considered timely had we been aware of protest to agency. Prior dismissals are affirmed because initial reconsideration request containing additional information was untimely.

Penney's Gemstones (Penney's) again requests the reconsideration of our dismissal of its protest with regard to solicitation No. DE-RP08-84NV10409 issued by the Department of Energy (DOE). We affirm the dismissal.

We initially dismissed Penney's protest on December 12, 1984, because its protest was received in our Office on November 30, 1984, more than 6 weeks after DOE rejected Penney's bid on October 17. Penney's Gemstones, B-217253, Dec. 12, 1984, 84-2 C.P.D. ¶ 661. Subsequently, on January 16, 1985, we dismissed Penney's request for reconsideration, received in our Office on January 15, 1985, because the request was not filed within 10 working days after the basis of the reconsideration was known or should have been known, i.e., our decision of December 12, 1984, dismissing Penney's protest.

In this second request for reconsideration, Penney's points out that its first request for reconsideration made clear that on October 25, 1984, it had protested to DOE the rejection of its bid within 10 working days of DOE's October 17 adverse action. Penney's first request for reconsideration also showed that on November 8, 1984, the DOE denied Penney's protest. Thus, Penney's argues that its protest to us on November 30, 1984, might have been considered timely filed. Accordingly, Penney's asks that we consider the merits of its protest.

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In its initial protest to our Office, Penney's did not show that it had timely filed a protest with DOE nor did it show the date that DOE denied its protest. The record before us at that time only showed that Penney's bid had been rejected by DOE on October 17, 1984, which led to our conclusion that its protest to our Office on November 30, 1984, was untimely. Had Penney's timely requested reconsideration of our decision dismissing its protest, we would have accepted Penney's statement regarding its protest to the agency, treated the protest as timely, and considered the case on the merits. Because the reconsideration request was not filed timely, however, we dismissed it.

Since Penney's protest initially was properly dismissed as untimely, and since its request for reconsideration also was untimely, we affirm the prior dismissals.



Acting Comptroller General
of the United States