

DECISION



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

FILE: B-219316.2

DATE: August 1, 1985

MATTER OF: Hexagon Honeycomb Corporation--
Reconsideration

DIGEST:

The fact that a protest received in GAO after the 10-day period for filing a timely protest was sent to GAO by certified mail 2 business days before the period expired is not a basis on which to waive the protest's untimeliness.

Hexagon Honeycomb Corporation (Hexagon) requests reconsideration of our dismissal of its protest, as untimely, concerning invitation for bids (IFB) No. DAAJ10-84-B-A071, issued by the Department of the Army. We affirm the dismissal.

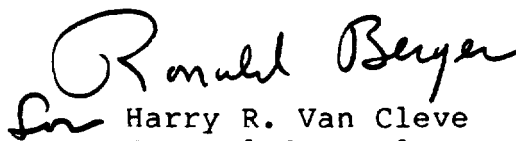
The IFB was a small business set-aside and required bidders to certify that all requested supplies would be manufactured or produced by a small business concern. Hexagon certified that not all supplies would be manufactured or produced by small businesses, and on June 14 the Army notified Hexagon that its bid was being rejected as nonresponsive. The contracting officer explained the Army's decision at a June 18 meeting with the firm. In a protest received in our Office July 5, Hexagon asserted it merely had misinterpreted the certification requirement, and that its bid thus should not have been rejected. We dismissed the protest as untimely pursuant to 4 C.F.R. § 21.2(a)(2) (1985) on the ground that it was not filed with our Office within 10 days after Hexagon knew its protest basis.

Hexagon argues on reconsideration that we should consider its protest on the merits because the protest was sent by certified mail on June 28 and thus should have been received in GAO by July 2, the tenth working day after Hexagon knew its protest basis. A protester makes use of the mails at its own risk, however, and a delay in the mails does not serve as a basis for waiving our Bid Protest Regulations and considering an untimely protest. Argus Services, Inc., B-213689, Mar. 19, 1984, 84-1 C.P.D. ¶ 325. The fact that Hexagon mailed its protest by certified mail

on June 28, rather than by regular mail, is not relevant in this regard.

Hexagon alternatively requests that we consider its protest pursuant to either of the timeliness exceptions in our regulations: where good cause for the late filing is shown, or where the protest raises issues significant to the procurement community. See 4 C.F.R. § 21.2(c). The good cause exception, however, is limited to circumstances where some compelling reason beyond the protester's control prevented the firm from filing a timely protest. Morrison-Knudson Co., B-209609, Mar. 10, 1983, 83-1 C.P.D. ¶ 245. Hexagon alleges no such circumstances. The significant issue exception is limited to protests that raise issues of widespread interest to the procurement community that have not been considered before. Vycor Corp., et al., B-212867, et al., Feb. 15, 1984, 84-1 C.P.D. ¶ 205. We previously have considered and denied protests by firms whose bids were rejected as nonresponsive for the same reason as was Hexagon's. E.g., ATD-American Co., B-217290, Jan. 23, 1985, 85-1 C.P.D. ¶ 91.

Our dismissal of Hexagon's protest is affirmed.
4 C.F.R. § 21.12(a).


Harry R. Van Cleve
General Counsel