

Boat House
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DECISION



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

FILE: B-221492.2 **DATE:** February 3, 1986

MATTER OF: Belleville/St. Louis Coach Company--
Reconsideration

DIGEST:

Prior dismissal of a protest as untimely is affirmed where the protester's request for reconsideration clearly fails to meet the firm's burden to show that the prior dismissal was legally or factually erroneous.

Belleville/St. Louis Coach Company requests reconsideration of our December 23, 1985, dismissal of the firm's protest concerning the award of a contract under invitation for bids (IFB) No. F11623-85-B-0038, issued by the Department of the Air Force as a 100-percent small business set-aside for the acquisition of limousine services. We affirm the dismissal.

Belleville had filed a protest with this Office on December 20, alleging that the Air Force had allowed continued performance of the contract by Vandalia Bus Lines, Inc., after the Small Business Administration's (SBA) Chicago Regional Office had determined Vandalia to be other than small for purposes of the procurement. We dismissed the protest as untimely in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985), which require that protests alleging other than solicitation improprieties be filed (received) within 10 working days after the basis of protest is known or should have been known, whichever is earlier. Since the SBA's initial determination that Vandalia was other than small had been issued on September 24, we concluded that Belleville's basis of protest--continued performance of the contract by Vandalia--was or should have been known to Belleville well before 10 working days prior to December 20.

Belleville now requests reconsideration of our prior dismissal on the ground that the SBA's Office of Hearings and Appeals did not finally rule that Vandalia was other

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than small until December 18 and, therefore, since its basis of protest did not arise until that event, the December 20 protest submission was timely.

We find nothing in the firm's request for reconsideration that meets its burden to show that our prior dismissal was legally or factually erroneous. See Department of Labor--Reconsideration, B-214564.2, Jan. 3, 1985, 85-1 CPD ¶ 13.

The record establishes that Belleville had not been apprised of the SBA's final ruling when it filed its protest on December 20. In this regard, Belleville's protest letter was dated December 17, but the SBA's final ruling, as already indicated, was not issued until December 18. (Belleville's protest submission had attached a copy of the SBA's initial size status determination of September 24, but the firm has just now furnished a copy of the SBA's final ruling in its present request for reconsideration.) Therefore, we believe it is clearly unreasonable for Belleville to argue that its basis for protest only arose when it learned that the Air Force was allowing continued performance by Vandalia despite the SBA's final determination, since its original protest was obviously based upon the SBA's initial determination of September 24.

It is clear, therefore, that Belleville knew or should have known of Vandalia's continued performance in the face of SBA's initial September 24 determination. Consequently, Belleville's protest submission of December 20 was untimely and was properly dismissed without consideration. 4 C.F.R. § 21.3(f) (1985); see also General Telephone Co. of California, B-218571.2, May 9, 1985, 85-1 CPD ¶ 518.1/

^{1/} The Air Force has informally advised this Office that Vandalia in fact is not the awardee under the IFB in question and only performed the limousine services for 2 months as a subcontractor to the actual awardee (who could not perform for that period pending issuance of the appropriate license). The Air Force further states that Vandalia is only continuing to perform a separate prior contract for school bus services, which is not affected by the SBA's size status determination. We see no need to obtain a written report from the Air Force since, in any event, Belleville's protest is untimely, and, therefore, the firm is not entitled to a development of the administrative record.

We also reject Belleville's contention that our 10-day filing requirement is unduly burdensome and, therefore, a denial of due process. Bid protests require effective and equitable procedures so that all parties have an opportunity to present their cases and so that protests can be resolved within the strict timeframes established by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551-3556 (West Supp. 1985). C-RAN Corp., B-218553.2, May 14, 1985, 85-1 CPD ¶ 543. Our regulations, which implement the CICA, impose the 10-day filing requirement so that this Office will be able to decide an issue in controversy while corrective action, if warranted, is possible. See Engineers International Inc.--Reconsideration, B-219760.2, Aug. 23, 1985, 85-2 CPD ¶ 225. Further, while the 10-day requirement does require expeditious action by the protester, there are numerous means of transmitting a protest to this Office that will assure prompt receipt if mailing time is not judged to be sufficient. We therefore do not view the time limit as unduly burdensome.

Our prior dismissal is affirmed.

for *Seymour E. Gies*
Harry B. Van Cleve
General Counsel