

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

FILE: 8-222891 **DATE:** May 6, 1986
MATTER OF: Kenneth J. Pedersen

DIGEST:

Protest that was not timely filed either with the contracting agency or the General Accounting Office is dismissed. Protester's lack of knowledge concerning filing deadlines is not a basis for waiving timeliness requirements since prospective contractors are on constructive notice of Bid Protest Regulations.

Kenneth J. Pedersen protests the Department of Energy's (DOE) determination that his response to request for proposals (RFP) No. DE-RP01-84-GC20043 was technically unacceptable. We dismiss the protest as untimely.

Mr. Pedersen's protest to our Office, filed on April 22, 1986, indicates that DOE advised him of the specific bases for holding his proposal unacceptable on November 1, 1985. Mr. Pedersen acknowledges that he first protested this determination to DOE on January 1, 1986, and states that DOE dismissed that protest as untimely on March 14. Mr. Pedersen asks that we consider the substance of his protest since he was unaware of the filing deadlines imposed by DOE and by our Office.

Our Bid Protest Regulations require that a protest to the contracting agency or to our Office alleging other than solicitation improprieties be filed not later than 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1985). Additionally, if the protest is filed initially with the contracting agency, our Office will consider a subsequent protest filed within 10 days of adverse agency action, provided the initial protest with the agency was timely. 4 C.F.R. § 21.2(a)(3).

Neither Mr. Pedersen's protest to DOE nor his subsequent protest with our Office was filed timely. Mr. Pedersen's protest to DOE was filed more than 10 working days after he learned the reason for the agency's determination of technical unacceptability, and he protested to our Office

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more than 10 days after DOE dismissed his initial protest. The fact that Mr. Pedersen may not have known of these filing deadlines is not a basis for waiving them; prospective contractors are on constructive notice of our Bid Protest Regulations since they are published in the Federal Register and the Code of Federal Regulations. See Westwood Pharmaceuticals Inc., B-214603, July 25, 1984, 84-2 C.P.D. ¶ 111.

Mr. Pedersen also suggests that DOE's failure to notify him of its filing deadline or of the rules that apply to protests with our Office effectively insulates DOE's procurement decisions from review. He argues that this justifies our consideration of the substance of his protest under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c). We do not agree.

Under the significant issue exception, we will consider untimely protests when the issue raised is of widespread significance to the procurement community and has not been considered before. See Kearflex Engineering Co., B-212537, Feb. 22, 1984, 84-1 C.P.D. ¶ 214. In order to prevent the timeliness requirements from becoming meaningless, this exception is strictly construed and seldom used. See Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55.

We do not view the matter of DOE's determination of Mr. Pederson's technical unacceptability to have widespread significance to the procurement community, nor does this case present an issue of first impression. In addition, we are unpersuaded by Mr. Pedersen's argument that DOE's alleged failure to ensure that its prospective contractors are familiar with bid protest regulations effectively insulates DOE's procurement decisions from review. Our Office often has reviewed DOE procurement actions called into question by appropriately filed protests. See e.g. E. H. Pechan and Associates, Inc., B-221058, Mar. 20, 1986, 86-1 C.P.D. ¶ ____; TRW Inc., B-200142, Apr. 16, 1981, 81-1 C.P.D. ¶ 294. Accordingly, the protest does not fall within the significant issue exception.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel