DECISION

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

FILE: B-219878.2 **DATE:** June 6, 1986

MATTER OF: International Representation & Services, Espana, S.A.--Reconsideration

DIGEST:

1. A protest is untimely although received on the 10th working day after the protest was mailed when the protest letter is dated 2 days prior to the date of mailing, since the date of the letter showed that the protester was aware of its basis for protest on the earlier date.

2. Allegation that the time period for filing bid protests discriminates against overseas firms because of international mailing delays is without merit since overseas firms can avoid the delays associated with international mail by transmitting their protests via other means.

3. Contract awardee is bound by the terms of its contract with the government notwithstanding an alleged contrary prior oral agreement with an agency employee, and a contention that the awardee is not complying with certain terms of its best and final offer as accepted by the government involves a matter of contract administration that the General Accounting Office does not review.

International Representation & Services, Espana, S.A. (International) requests reconsideration of our dismissal of its protest against the Department of the Navy's contract award under request for proposals (RFP) No. N668171-84-R-0164. The protest was dismissed as untimely because it was not received by our Office within 10 working days after International had actual or constructive knowledge of the denial of its initial protest to the Navy. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985).

We affirm our initial dismissal.

035616

International insists that it met all timeliness requirements and that "any perceived or actual delay" in its submissions was beyond its control and was caused by "international mail transit times or non-delivery of such mail." International contends that it received the June 7, 1985, denial of its protest to the Navy on July 31 and mailed its protest to our Office on the same day. It further contends that our date stamp on the return receipt indicates that we received the protest 10 working days from the date of mailing. The return receipt submitted to us by International indicates that its protest was deposited in the post office in Rota, Spain on July 31, and received by us on August 14, the 10th working day from July 31.

International's protest, however, actually was dated July 29 and was thus received in our Office 12 working days later. We think that this clearly shows that International knew of the Navy's June 7 denial at least by July 29 and therefore that its protest to our Office was untimely.

With respect to International's contention that the 10-day filing requirement discriminates against companies based overseas that must endure the unreliability of the international mail system, we point out that the purpose of our timeliness requirements is to enable the contracting agency or our Office to decide an issue while it is still practicable to take effective corrective action, if warranted, without unduly disrupting the government procurement process. See Engineers International Inc.--Reconsideration, B-219760.2, Aug. 23, 1985, 85-2 CPD ¶ 225. In our view, a special exception from the timeliness requirements for firms based overseas would frustrate this purpose by introducing into the protest process undue delays, confusion and suspicion. Furthermore, while protests must be filed in writing, there is no requirement that they be sent by mail. See 4 C.F.R. § 21.1. Accordingly, an overseas protester can avoid any delays associated with international mail by sending its protest by other means. Cf. Contact International, Inc., B-207602, May 31, 1983, 83-1 CPD ¶ 573 (where we held that a protester who was in Okinawa 3 days before its protest should have been filed could have submitted a timely protest to our Office despite the difficulty of communicating with the mainland). We therefore find no merit to this aspect of International's reconsideration request.

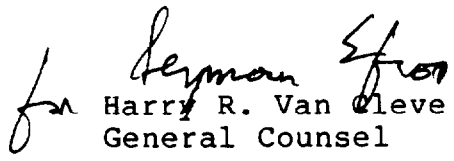
International also contends that the Navy improperly failed to withhold contract award pending resolution of International's agency-level protest. In the Navy's protest denial of June 7, 1985, International was informed that the contract had been awarded on March 18, 1985, 3 days prior to the date of the agency-level protest. Under the Competition in Contracting Act (CICA), 31 U.S.C. § 3553(d) (Supp. II 1984), an agency is required to suspend contract

performance if it receives notice that a protest has been filed with the Comptroller General within 10 days of the date of award. However, CICA does not require suspension of performance for agency-level bid protests. Since the initial protest with this Office was not filed until several months later, suspension of performance was obviously not required. Therefore, we find no merit to this issue.

Additonally, International contends that its letter of July 31, 1985, and a supplemental letter of August 26, 1985, introduced a new reason for protest, based on improprieties of which the firm had just learned. However, as previously noted, we received no letter of July 31, 1985, from International, and its letter of July 29 was untimely. Further, while the August 26 letter does raise a new issue, that issue involves a matter which we do not review.[1]

The August 26 letter alleges that the awardee is not complying with certain terms of its best and final offer concerning the length of time American personnel will be retained to train the contractor's Spanish employees. The protester asserts that prior to the awardee's submission of its best and final offer, the awardee and a Navy employee (whose position is unclear) agreed that the actual time period for retaining American personnel would be shorter than that stated in the best and final offer, thereby allowing for a reduction in proposed costs. The awardee, however, is bound by the terms of its contract with the Navy, notwithstanding any alleged prior oral agreement with Navy personnel, see Bionetics Corp., B-221308, Dec. 24, 1985, 85-2 CPD ¶ 715, and the extent to which the awardee is complying with the terms of its contract is a matter of contract administration, which we do not review. See 4 C.F.R. § 21.3(f)(1).

Accordingly, we find no basis to reverse our dismissal of International's protest. Our prior decision is affirmed.



for Harry R. Van Cleve
General Counsel

---

[1] The letter was received after we dismissed the original (July 29) protest, and was not considered because it appeared to merely supplement the original, untimely protest. We did not recognize at that time that it also raised a new issue.