



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Guild Associates, Inc.--Request for
Reconsideration
File: B-224098.2
Date: October 6, 1986

DIGEST

Dismissal of original protest is affirmed where protester failed to file its protest within 10 working days of adverse agency action on its agency-level protest.

DECISION

Guild Associates, Inc. requests that we reconsider our August 26, 1986, dismissal of its protest (B-224098.1) under request for proposals (RFP) No. N00123-86-R-0899 issued by the Naval Supply Systems Command (NSSC) for the supply of oxygen air generation equipment.

In Guild's protest to the agency prior to the due date for receipt of proposals and in its subsequent protest to our Office, Guild alleged that the brand name or equal specifications were unduly restrictive of competition and that there were potential safety problems with the brand name equipment. We dismissed the protest as untimely because Guild's protest was filed with our Office more than 10 days after initial adverse action on its agency-level protest, i.e., the receipt of offers, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1986), which provide that a protester's failure to file its protest with us within 10 days of actual or constructive knowledge of adverse agency action will result in dismissal of the protest.

We affirm the dismissal.

On reconsideration, Guild states that it should not be held responsible for knowing when adverse agency action occurred because it has "no direct knowledge of the internal workings" of the agency.

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We find nothing in Guild's request for reconsideration which meets its burden to show that our prior dismissal was legally or factually incorrect. See 4 C.F.R. § 21.12(a). The protester's lack of actual knowledge of the "internal workings" of the agency provides no basis for reopening the file. Our regulations define the term "adverse agency action" in a manner which does not require protesters to have such knowledge.^{1/} Since our regulations are published in the Federal Register protesters are charged with constructive notice of their contents. See Coastal Industries, Inc.--Reconsideration, B-223158.2, June 30, 1986, 86-2 C.P.D. ¶ 20.

The record shows that the agency proceeded with the procurement--despite the protester's objections thereto--by accepting offers on July 14 without amending the RFP. We note that Guild admits that it was aware that "bids were accepted and were being evaluated"; thus Guild had knowledge of the adverse agency action and was therefore required to file its protest with our Office within 10 days of this event.

In addition, the protester argues that its protest was never resolved at the agency level because the agency's August 4, 1986, response to its protest was not an unequivocal denial, and therefore did not constitute an adverse agency action which would trigger the protester's obligation to proceed to GAO within 10 days. We need not resolve this issue because we base our dismissal on the reasons discussed above, the protester's obligation to file its protest with our Office within 10 days of July 14.

The dismissal is affirmed.


Harry R. Van Cleve
General Counsel

^{1/} The term is defined as:

"any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include . . . a procurement action such as the opening of bids or receipt of proposals," 4 C.F.R. § 21.0(e).