



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Construction--Reconsideration

File: B-225023.2

Date: December 4, 1986

DIGEST

Request for reconsideration filed more than 10 days after the protester received notice of dismissal of its protest is untimely.

DECISION

Tri-State Construction requests reconsideration of our dismissal of its protest concerning the award of a contract under request for proposals No. DACA45-86-R-0005, issued by the U.S. Army Corps of Engineers, Omaha, Nebraska. We dismiss the request.

On October 21, 1986, Tri-State filed a protest with this Office complaining that although it had submitted the low proposal for the design and construction of military housing units, the Corps had evaluated the proposal improperly and had made award to another offeror. Our Office subsequently contacted Mr. Henderson of Tri-State who informed us that he had first learned of the basis for the protest on July 8 when he received a letter of that same date from the Corps. We therefore dismissed the protest under section 21.2(a)(2) of our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1986), which provides that protests other than those concerning apparent solicitation defects must be filed no later than 10 days after the basis for protest is known or should have been known.

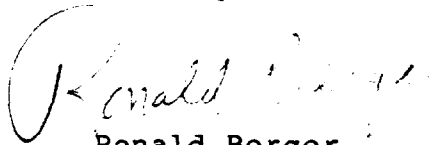
By letter dated November 7, received in our Office on November 12, Tri-State's counsel asks that we reconsider our dismissal of the protest on the basis that Tri-State had filed a protest with the Corps within 10 days of its receipt of the Corps' letter of July 8. Under our regulations, if a timely protest is filed initially with the contracting agency, we will consider a subsequent protest that is filed with this Office within 10 days of the time the protester

learns of initial adverse agency action on the agency-level protest. 4 C.F.R. § 21.2(a)(3). A copy of Tri-State's letter of July 18 to the Corps accompanied the request for reconsideration. The protester's counsel does not indicate whether or when the Corps responded to that letter.

The request for reconsideration was not timely filed. Our regulations provide that such requests must be filed, meaning received at this Office, no later than 10 days after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.12(b). The request for reconsideration indicates that our dismissal notice was received by Tri-State on October 27, yet the request for reconsideration was not filed until November 12, more than 10 days later. It is therefore untimely. Air Inc.--Request for Reconsideration, B-218730.5, Jan. 23, 1986, 86-1 CPD ¶ 73. Although the protester may not have been able to consult with its counsel until sometime after October 27, the time required for a protester to consult with counsel does not affect the timeliness of a protest. See Medical Devices of Fall River Inc.--Reconsideration, B-207276.3, Dec. 21, 1982, 82-2 CPD ¶ 558.

In any event, upon review of the material submitted with the request for reconsideration, it appears that the dismissal of the original protest was proper. Assuming that the letter of July 18 to the Corps constituted an agency-level protest (and there is no indication the Corps so regarded it), the protester waited nearly 3 months before filing its protest here. A protester is not permitted to delay indefinitely filing a subsequent protest to this Office while it awaits a decision on the merits of a protest filed with the agency. REACT Corp., B-219642, Aug. 22, 1985, 85-2 CPD ¶ 215 (protest to this Office filed 3 months after agency-level protest held untimely).

The request for reconsideration is dismissed.


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General Counsel