



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Adrian Supply Co.--Reconsideration

File: B-225472.3

Date: March 23, 1987

DIGEST

1. In the absence of affirmative evidence to show that a contracting agency sent a letter rejecting a proposal on a date other than that stamped on the letter, the General Accounting Office will assume that the letter was actually sent on or about that date, and for timeliness purposes will assume receipt within 1 calendar week.

2. The General Accounting Office denies a second request for reconsideration of the dismissal of an untimely protest where the protester fails to show that the protest was timely or that the dismissal otherwise may have been based on any errors of fact or law.

DECISION

Adrian Supply Co. requests a second reconsideration of our dismissal of a protest that was filed more than 10 working days after Adrian's formal notification of the contracting officer's rejection of its offer as technically unacceptable. See Adrian Supply Company--Reconsideration, B-225472.2, Dec. 9, 1986, 86-2 CPD ¶ 663, affirming a prior dismissal by computer notice.

We deny the request for a second reconsideration.

Adrian's protest concerned an award under solicitation No. WG5100-6-00015, issued by the Department of the Commerce's National Oceanic and Atmospheric Administration (NOAA) for single-phase and three-phase AC power conditioners. Documents submitted with the protest indicated that the contracting officer had advised Adrian of its rejection by letter of October 8, 1986. However, we did not receive Adrian's protest until more than a month later, on November 10. In our decision, we indicated that our Office assumes that a disappointed bidder will receive a rejection letter within 1 calendar week, and that we count the 10 working days for timely filing from that time.

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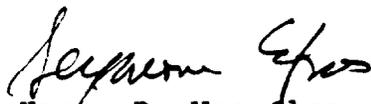
Support

Adrian argues that the letter from the contracting agency, notifying it of the rejection of its proposal, was sent in such a way that neither the date of mailing nor the date of receipt can be verified. Adrian states that our assumption that the agency discharged its obligations in a timely fashion prejudices our decision and permits the agency to control the bid protest process.

We disagree. In general, it is our practice to resolve doubts as to timeliness in favor of the protester. See, e.g., Instruments & Controls Service Co., B-222122, June 30, 1986, 65 Comp. Gen. _____, 86-2 CPD ¶ 16. Moreover, when it can be objectively determined that an agency delayed notifying a protester of an award to another offeror, we have considered that fact in fashioning a remedy, if one is otherwise appropriate. See Bencor - Petrifond - Casagrande, B-225408, Mar. 6, 1987, 87-1 CPD ¶ ____.

Adrian has neither alleged nor proved that in this case the agency delayed in notifying it of the rejection of its proposal; in fact, the firm acknowledges that its "scenario" in which a bidder is prejudiced by an agency's deliberate delay in mailing or backdating of its correspondence "may not have occurred in this case." In the absence of any affirmative statement by Adrian as to when it received the agency's rejection letter, we continue to believe that the firm is responsible for the untimely filing of its protest. We consider the date stamped on the agency's letter, October 6, to be sufficient evidence of mailing on or about that date, and we have no reason to believe that Adrian received it more than 1 calendar week thereafter. See T.S. Head & Associates, Inc., B-220316, Sept. 30, 1985, 85-2 CPD ¶ 368.

Since Adrian has not shown that its protest was timely or that the dismissal may have been due to any error of fact or law, we deny the request for reconsideration. 4 C.F.R. § 21.12.

for 
Harry R. Van Cleve
General Counsel