



The Comptroller General
of the United States

Washington, D.C. 20548

P. Williams - PL

Decision

Matter of: Whittaker Controls, Inc.--Reconsideration
File: B-227450.2
Date: July 20, 1987

DIGEST

Dismissal of protest for failure to file a copy with the contracting officer within 1 day after filing with GAO is affirmed. While protester claims to have mailed a copy at the time it mailed the protest to GAO, the notice requirement which specifies receipt of the protest by the contracting agency has not been met.

DECISION

Whittaker Controls, Inc., requests that we reconsider our dismissal of its protest under request for quotations (RFQ) DLA400-87-P-C350, issued by Defense Logistics Agency. We dismissed the protest because Whittaker failed to furnish a copy of the protest to the contracting officer within 1 day after the protest was filed in our Office as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1986).

We affirm the dismissal.

In its request for reconsideration, Whittaker states that it complied with our notice requirement by mailing a copy of its protest to the contracting activity in Richmond, Virginia, on June 5, the same day the protest was mailed to our Office. Whittaker contends that if the agency did not timely receive the copy, it was a result of "possible postal delays." In this regard, the contracting agency advised us that as of June 18, it still had not received the protest.

The protester's actions did not satisfy the notice requirement in section 21.1(d). The regulation requires a protester to ensure that the contracting officer receives the copy of the protest no later than 1 day after the protest is filed; therefore, the fact that Whittaker may have mailed it to the agency within that period is not relevant. See Systems & Computer Technology Corp., B-224552, Oct. 24, 1986, 86-2 C.P.D. ¶ 473. Whittaker's

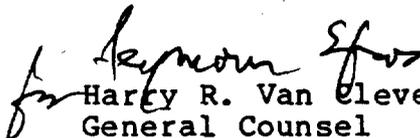
039520

allegation that the Postal Service may have somehow contributed to the delay in receipt does not excuse the firm's failure to comply with section 21.1(d). We regard the Postal Service as Whittaker's agent in delivering a copy of the protest to the contracting officer; any failure on the part of the Postal Service to timely deliver the protest is attributable to Whittaker, which, as principal, must bear the consequences of its agent's failure. AAA Engineering & Drafting, Inc., B-225431.2, Dec. 3, 1986, 86-2 C.P.D. ¶ 638.

The basis for the 1-day notice requirement is found in the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (Supp. III 1985), which requires contracting agencies to file a written report with our Office within 25 working days after we notify the agency of the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hinders the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to provide effective and timely consideration of protests of procurement actions. See AAA Engineering & Drafting, Inc., B-225431, Nov. 5, 1986, 86-2 C.P.D. ¶ 525.

By letter dated July 7, 1987, Whittaker Submitted a protest identical to its initial protest, and indicated that a copy was sent to the agency. Apparently this is an attempt by Whittaker to cure the defect in its initial filing. Since Whittaker knew the basis of its protest on June 5, 1987, when its initial protest was filed, the attempt to perfect its filing by the July 7, 1987, letter is clearly untimely under our Bid Protest Regulations since it was filed more than 10 working days after the basis of the protest was known. 4 C.F.R. § 21.2(a)(2).

The dismissal is affirmed.


for Harry R. Van Cleve
General Counsel