



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: The Peddler's Motor Inn--Request for  
Reconsideration  
File: B-227110.2, B-227111.2  
Date: August 17, 1987

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### DIGEST

Prior decision holding that a protest against a solicitation cancellation, initially filed with the procuring agency 1 day before the closing date for receipt of quotations, was untimely where the agency received quotations on the scheduled closing date without taking corrective action and the subsequent protest to our Office was filed more than 10 working days later is affirmed, since the protester has not presented any factual or legal basis for us to overrule our decision.

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### DECISION

The Peddler's Motor Inn (PMI) requests reconsideration of our decision, The Peddler's Motor Inn, B-227110, B-227111, July 29, 1987, 87-2 C.P.D. ¶ \_\_\_\_, in which we dismissed as untimely PMI's protest against the Air Force's cancellation and reissuance of a request for quotations (RFQ) for blanket purchase agreements for the rental of certain motel rooms. We dismissed PMI's protest because it was initially filed with the contracting activity and was not filed in our Office until more than 10 working days after initial adverse agency action on the protest.

We affirm our prior decision.

The resolicitation in question had an April 16, 1987, closing date for the receipt of quotations. On April 15, PMI protested to the Air Force, alleging that the cancellation of a prior RFQ for the same requirement and the resolicitation of the requirement were improper. The Air Force accepted quotations, without canceling or extending the closing date, and subsequently sent PMI a letter dated April 24 in which it specifically denied the protest. PMI filed its protest in our Office on May 8.

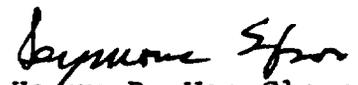
We dismissed the protest as untimely under our Bid Protest Regulations because it was filed more than 10 working days after the April 16 closing date, which we held constituted the initial adverse agency action. 4 C.F.R. § 21.2(a)(3)

(1987); Prospective Materials Co., Inc., B-225495, Mar. 18, 1987, 87-1 C.P.D. ¶ 303. In its request for reconsideration, PMI contends that it did not receive actual or constructive notice of the adverse agency action until April 25, when it received the letter specifically denying its protest. PMI states that it received no notification that the Air Force was proceeding with the closing date. PMI further contends that it was entitled to presume that the closing date was postponed on the basis of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.103(a) (1986), which provides that "when a protest is filed only with the agency, an award shall not be made until the matter is resolved unless..." We disagree.

"Adverse agency action" is any action or inaction on the agency's part which is prejudicial to the position taken in a protest filed with the agency. We have consistently held that the fact that the procuring agency received proposals on a scheduled closing date without taking the corrective action requested by the protester constitutes initial adverse agency action under section 21.0(e) of our Bid Protest Regulations. 4 C.F.R. § 21.0(e); Dock Express Contractors, Inc.--Request for Reconsideration, B-223966.2, Mar. 4, 1987, 87-1 C.P.D. ¶ 243; Monaco Enterprises, Inc., B-217037, June 7, 1985, 85-1 C.P.D. ¶ 654. Under the present circumstances, PMI knew or should have known that the closing date occurred as scheduled on April 16, and PMI therefore was required to protest to our Office within 10 working days of that date. Hartridge Equipment Corp., B-219982, Sept. 11, 1985, 85-2 C.P.D. ¶ 286.

PMI had no reason to infer that the closing date had been postponed because it filed an agency-level protest. The FAR provision on which PMI relies in support of this inference provides that award generally shall not be made during the pendency of such a protest; it does not require the postponement of a closing date, or preclude the opening of proposals. FAR, 48 C.F.R. § 33.103(a). Similarly, PMI's decision to continue to pursue the protest at the agency, and the Air Force's subsequent denial of the protest did not alter the protester's responsibility to conform to the filing requirements of our regulations. Dock Express Contractors, Inc.--Request for Reconsideration, B-223966.2, supra.

Accordingly, we affirm our prior decision.

  
Harry R. Van Cleve  
General Counsel