



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tenavision, Inc.--Reconsideration

File: B-227676.2

Date: September 23, 1987

DIGEST

Request for reconsideration of the dismissal of a protest is dismissed as untimely since it was filed more than 10 working days after the protester received the dismissal of the protest.

DECISION

Tenavision, Inc. requests that we reconsider our August 18, 1987, dismissal of its protest against allegedly restrictive specifications in invitation for bids (IFB) No. DAKF03-87-B-0011 issued by the Department of the Army. We dismissed the protest because Tenavision failed to comply with the requirement of our Bid Protest Regulations that, within 7 working days of its receipt of the agency report on the protest, the protester file either its comments on the agency report or a statement of continued interest in the protest. 4 C.F.R. § 21.3(e) (1987).

We dismiss the request for reconsideration.

Tenavision's protest was filed on July 9, 1987, and, by notice of July 10, we acknowledged our receipt of the protest and advised Tenavision that the Army's report on the protest was due in our Office on August 13. In addition, the notice further advised Tenavision that unless we received its comments or a statement that it wished to have a decision based on the existing record within 7 working days from our receipt of the report, we would close the file without action.

We received the Army's report on August 6, 1 week before the due date. On August 12, the General Accounting Office (GAO)

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attorney handling the case called the protester's president to ascertain when the agency report was received. Since the firm's president was unavailable, the GAO attorney requested a return call. On August 14, Tenavision's counsel informed the GAO attorney that a copy of the agency report was received on August 6 and that his client would be filing comments either directly or through its counsel. Tenavision's comments on the agency report were received in our Office on August 20, 3 working days late, at which time its protest had already been dismissed on August 18.

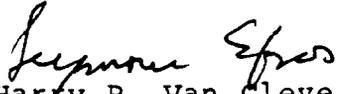
By letter dated September 10, Tenavision requested reinstatement of the protest on the ground that the dismissal was based on "a clerical error at GAO" because Tenavision's counsel alleges that he informed the GAO attorney that "while it was originally believed that Tenavision had received the Government Report on August 6, 1987, in fact, the Government Report had not been received until August 11, 1987." Therefore, the protester argues that its comments filed at GAO on August 20 were timely since they were filed within 7 working days after receipt of the agency report on August 11. Moreover, Tenavision's counsel points out that upon receiving our dismissal notice on August 22, he telephoned our Office to ascertain "the basis for this dismissal." That information was allegedly given to him on September 9 and its request for reconsideration was filed 1 day later. Thus, Tenavision implies that its request for reconsideration is timely.

We see no basis to reconsider our dismissal and to reopen the file since the request for reconsideration is untimely. Our Bid Protest Regulations provide that such requests must be filed no later than 10 days after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.12(b).

Although Tenavision's counsel characterizes the purpose of his telephone calls to the GAO attorney as a request for the basis of our dismissal, we note that this information was previously furnished to the protester in our dismissal notice of August 18. In that notice, we stated that the protest was being dismissed "because the protester failed to respond to the contracting agency's report within the time required." Under these circumstances, the protester knew or should have known the basis for reconsideration and the time spent in pursuing further information from the GAO attorney does not affect the timeliness of the request for reconsideration. See Tri-State Construction--Reconsideration, B-225023.2, Dec. 4, 1986, 86-2 C.P.D. ¶ 645. Therefore,

this request for reconsideration filed more than 10 days
after the dismissal notice was received is clearly untimely.
Id.

The request for reconsideration is dismissed.

for 
Harry R. Van Cleve
General Counsel