



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Maddux & Associates--Request for
Reconsideration
File: B-228285.2
Date: October 27, 1987

DIGEST

Where a firm initially protested to the contracting activity alleging a defect in the solicitation, the agency's opening of initial proposals without taking the requested corrective action constituted initial adverse agency action, and a protest to General Accounting Office 6 weeks later, based on agency's written denial of original agency level protest, is untimely.

DECISION

Maddux & Associates requests reconsideration of our September 25, 1987 dismissal of its protest as untimely filed under our Bid Protest Regulations. 4 C.F.R. § 21.2 (1987). We affirm the dismissal.

Under request for proposals (RFP) No. N00164-87-R-0145, the Department of the Navy solicited offers for a variety of support services for electronic warfare systems. By letter dated August 14, 1987, Maddux filed a protest with the contracting activity alleging that certain provisions of this solicitation were unduly restrictive of competition. Despite Maddux's complaints, the closing date for submission of initial proposals remained August 17, as scheduled. The contracting activity subsequently denied Maddux's agency level protest in a September 9 letter. Maddux then protested to our Office in a letter received September 24. Maddux apparently is of the belief that we erred in dismissing this protest as it was filed within 10 working days of the protester's receipt of the contracting activity's formal denial.

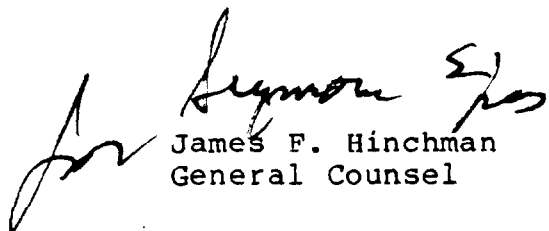
Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3). The quoted phrase is a term of art construed to include knowledge that the agency proceeded

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with the receipt of proposals in the face of the protest. See Shaw Aero Development, Inc., B-221980, Apr. 11, 1986, 86-1 CPD ¶ 357, aff'd on reconsideration, B-221980.2, May 28, 1986, 86-1 CPD ¶ 495; Sunrise Associates--Request for Reconsideration, B-219356.2, June 27, 1985, 85-1 CPD ¶ 738 (bid opening occurring one day following filing of agency level protest constitutes initial adverse agency action). More specifically, it is our general view that, once the contracting activity proceeds with accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness thus is measured from this point rather than from the receipt of a subsequent formal denial of the agency level protest. See Computer Dynamics, Inc., B-217585, Jan. 25, 1985, 85-1 CPD ¶ 106.

Here, Maddux filed its agency level protest on August 14, and the Navy nevertheless proceeded with the scheduled August 17 closing date. Because Maddux did not file its protest with our Office until September 24, the protest is untimely.

The dismissal is affirmed.


James F. Hinchman
General Counsel