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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rohar Industries, Inc.--Reconsideration

File: B-228277.2

Date: October 28, 1987

DIGEST

Protest filed more than 2 months after contracting agency express-mailed letter containing basis for protest is untimely since it was not filed within 10 working days of knowledge of basis for protest.

DECISION

Rohar Industries, Inc. (Rohar) requests reconsideration of our September 24, 1987 dismissal of the firm's protest as untimely. We affirm the dismissal.

By letter of September 24, Rohar protested the exclusion of its proposal from the competitive range and the award of a contract to Paceco, Inc., under Department of the Navy request for proposals (RFP) No. N62578-87-R-7034. Along with its protest, Rohar submitted a copy of a July 8 letter from the Navy informing the firm that its proposal had been determined not to be in the competitive range, and that the firm no longer was eligible for award. We determined, based on this letter, that the protest was untimely, and thus dismissed the protest in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1987) (although our dismissal notice referred to 4 C.F.R. § 21.2(a)(3), which applies only where, unlike here, a protest initially was filed with the contracting agency). In its request for reconsideration, Rohar asks that we reconsider our earlier dismissal and consider its protest on the merits.

Section 21.2(a)(2), of our Regulations requires that a protest be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. The Navy's letter advising Rohar that it was not in the competitive range was dated July 8 and was sent by express mail, but Rohar did not file a protest until

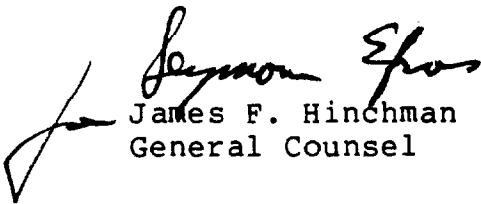
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September 24--more than 2 months later. Even allowing a reasonable time for delivery of the letter, the protest clearly was not filed within 10 working days after Rohar received it and thus was untimely. See The Fechheimer Bros. Co., B-215293, July 25, 1984, 84-2 CPD ¶ 113 (allowing a reasonable time for delivery of letter advising of exclusion from competitive range, protest filed almost 1 month after letter was mailed was untimely); see also Rochester Instrument Systems, Inc., B-224913.2, Nov. 10, 1986, 86-2 CPD ¶ 547 (protest filed later than 10 working days after exclusion from competitive range is untimely).

Rohar apparently believes that it timely protested its exclusion from the competitive range on July 8 by protesting within 10 working days after the September 14 award. This is not the case; again, it is the date Rohar first received notice of its exclusion from the competitive range from which the timeliness of its protest must be measured. See MedSource, Inc.--Request for Reconsideration, B-225635.2, Mar. 23, 1987, 87-1 CPD ¶ 330 (protest of exclusion from competitive range is untimely where filed after award rather than within 10 working days after notice of exclusion).

We add that Rohar is not an interested party, within the meaning of 4 C.F.R. §§ 21.0(a) and 21.1(a), to challenge the award to another firm. In this regard, a party is not "interested" if it would not be in line for award were its protest upheld. In this case, even if the award to the other offeror were found to have been improper, as Rohar contends, Rohar would not be in line for award in view of its own prior exclusion from the competitive range.

We affirm the dismissal.


James F. Hinchman
General Counsel