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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Data Monitor Systems, Inc.--Reconsideration
File: B-231201.2
Date: May 20, 1988

DIGEST

1. Protest properly was dismissed where the protester failed to provide a copy to the contracting agency within 1 day of filing at the General Accounting Office, as required by Bid Protest Regulations. Mailing a copy to the agency is not sufficient, since the Regulations clearly require actual receipt within 1 day.
2. Significant-issue exception in Bid Protest Regulations applies only to protests that are untimely filed, and there is no equivalent provision for waiving the requirement to provide a copy of the protest to the contracting agency within 1 day of filing.

DECISION

Data Monitor Systems, Inc. (DMS), requests that we reconsider our May 10, 1988, dismissal of its protest under Federal Aviation Administration (FAA) solicitation No. DTFA-02-88-88003 for audio-visual services. We dismissed the protest, filed in our Office on May 3, because on May 9 the FAA advised that DMS had not yet provided a copy of the protest to the contracting agency. Section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. part 21 (1988), requires that the contracting officer receive a copy of the protest within 1 working day after the filing in our Office.

We affirm the dismissal.

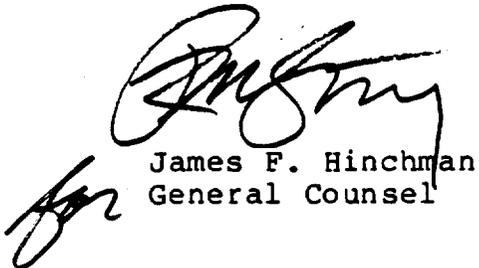
In requesting reconsideration, DMS asserts that on May 3 it mailed a copy of the protest to the contracting activity and that it had a second copy delivered on May 11. DMS further argues that, in any event, the issue raised in the protest--the propriety of the FAA's decision to perform the audio-visual services in-house instead of awarding a contract under the solicitation--warrants our review notwithstanding the failure to comply with section 21.1(d).

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There is no merit to DMS's request. The fact that DMS may have mailed a copy to the contracting officer on the day the firm filed the protest in our Office does not satisfy section 21.1(d), since our Regulations clearly require receipt of the copy within the prescribed period. See Whittaker Controls, Inc.--Reconsideration, B-227450.2, July 20, 1987, 87-2 ¶ 69. The basis for the 1-day notice requirement is found in the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 et seq. (Supp. III 1985), which requires the contracting agency 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 hampers the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to consider all objections to agency procurement actions in as timely a fashion as possible. See Refac Electronics Corp.--Reconsideration, B-226034.2, Feb. 4, 1987, 87-1 CPD ¶ 117.

Moreover, while section 21.2(c) of our Regulations provides for consideration of untimely protests that raise issues significant to the procurement community that have not been addressed before, there is no equivalent provision in our Regulations for waiving the requirement to furnish a copy of the protest to the contracting agency within 1 day. See Canvas & Leather Bag Co., Inc., B-227889.2, July 24, 1987, 87-2 CPD ¶ 89.

In the absence of any evidence refuting the FAA's advice that it did not receive a copy of the protest in the required time frame, or that the FAA otherwise should have known the basis for DMS's complaint so that the agency properly could respond within the statutory 25-day period, we conclude that the protest correctly was dismissed. See Discount Machinery & Equipment, Inc.--Request for Reconsideration, B-227885.2, Aug. 18, 1987, 87-2 CPD ¶ 176.


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General Counsel