



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BDH Enterprises--Request for Reconsideration

File: B-231879.2

Date: August 12, 1988

DIGEST

Protest based upon other than alleged improprieties in a solicitation that is filed later than 10 working days after the basis of the protest is known is untimely; agency's failure to notify protester of date of award to competitor does not excuse failure to protest within 10 days of when agency notified protester of award and of reason for rejection of protester's proposal.

DECISION

BDH Enterprises requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. N68836-88-Q-C072, issued by the Department of the Navy. We dismissed the protest because BDH did not file in a timely manner. We affirm the dismissal.

The contracting agency first informed BDH that Sylvan Service Corporation had been awarded a contract by letter of May 27, 1988. The letter was postmarked June 6, and appears to have been received by the protester on June 9. By letter of June 8, the contracting agency informed BDH that the firm's offer, which was \$615 less than Sylvan's, had been rejected because it was received after the closing date for receipt of proposals.

BDH protested to our Office on July 5, complaining about the award and about the delay in notifying BDH of the procurement's results (proposals had been due on March 14). We dismissed BDH's protest because it was not filed within 10 working days of when the basis of the protest was known or should have been known, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988). In this respect, the grounds for the protest should have been known to BDH after it received the Navy's June 8 letter which, we assume,

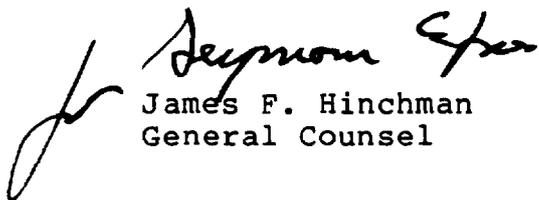
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was within 1 calendar week from the date it was sent. See Carr-Gottstein Properties, B-227750, Aug. 5, 1987, 87-2 CPD ¶ 131. To have been timely filed, BDH's protest therefore should have been received at this Office by June 29.

In requesting reconsideration of our dismissal, BDH Enterprises maintains that it was not able to file a timely protest because it was never informed by the Navy of the date on which the contract was awarded to Sylvan. However, the fact that the Navy did not note the award date is irrelevant because the basis of BDH's protest--the rejection of BDH's offer as late, and the consequent acceptance of a higher-priced proposal--was contained in the May 27 and June 8 letters from the contracting agency. The fact that BDH may have thought it was appropriate to wait for the Navy to furnish it with other information does not toll the time within which BDH was required to file a protest here. See H.A. Ekelin & Assocs., B-228972, Oct. 5, 1987, 87-2 CPD ¶ 338.

Finally, BDH implies that the Department of the Navy improperly delayed the issuance of the notice of award. The failure to provide prompt notice is a procedural deficiency, however, that does not affect the validity of an otherwise proper award. See American Indian Business & Technologies Corp., B-224476, July 23, 1986, 86-2 CPD ¶ 101.

Our dismissal of the protest is affirmed.


James F. Hinchman
General Counsel