



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Rocky Mountain Helicopters, Inc.--Request for  
Reconsideration  
File: B-231898.2  
Date: August 22, 1988

### DIGEST

1. Protest filed more than 10 working days after the contracting agency denied agency-level protest is untimely; protester's continued pursuit of the protest with the agency does not toll timeliness requirements.
2. Untimely protest that awardee's equipment does not meet specifications in solicitation does not present a significant issue warranting waiver of timeliness requirements since issue raised is not of widespread interest or importance to the procurement community.

### DECISION

Rocky Mountain Helicopters, Inc. (RMH) requests that we reconsider our dismissal of its protest against the award of a contract under request for proposals (RFP) No. F11626-87-R-0046, issued by the Air Force for transport aircraft. We dismissed RMH's protest because it was not filed with our Office within 10 working days after the protester had actual or constructive knowledge of initial adverse agency action. We affirm our dismissal of the protest.

By letter dated March 28, 1988, RMH filed a protest with the contracting officer alleging that a particular aircraft, the ARAVA 101B, did not meet certain technical requirements of the solicitation. The protest was denied by the contracting officer by letter dated June 6. RMH responded to the denial in a letter dated June 15, reiterating its argument that the ARAVA 101B did not meet the technical requirements of the solicitation because it was not compatible with the fuel which was to be used.

On June 24, RMH was notified that the contract was awarded to Pacific Alaska Airlines, Inc., a company which offered the ARAVA 101B aircraft.

043046/136629

On July 6, RMH filed a protest with our Office arguing that the ARAVA 101B aircraft did not meet the specifications in the RFP. We dismissed the protest as untimely because it was filed more than 10 days after RMH received the Air Force's denial of its agency-level protest. RMH now argues that its protest was timely because it was filed within 10 days of its notice of award of the contract.

Where, as here, a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action on the protest. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988); Linn Timber, Inc.--Reconsideration, B-225430.2, Nov. 18, 1986, 86-2 CPD ¶ 584. Thus, the 10-day period began to run when RMH received the June 6 letter denying the agency protest. Although RMH does not indicate when it received the Air Force's letter denying its protest, RMH clearly received the denial letter at the latest on June 15, the date of its letter responding to the denial. As a result, to be timely RMH's protest to our Office had to be filed within 10 days of June 15; since it was not filed until July 6, more than 10 days later, it was untimely. The fact that RMH in effect chose to request reconsideration by the Air Force of its denial of the agency-level protest before filing with our Office did not toll our timeliness requirements. Once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. Space Age Engineering, Inc., B-230148, Feb. 19, 1988, 88-1 CPD ¶ 173.

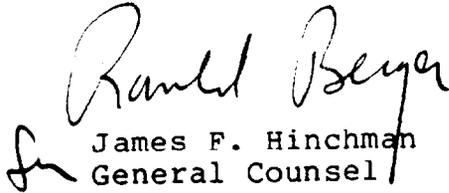
RMH also asserts that even if its protest is considered untimely, it raises issues significant to the procurement system, thus justifying a waiver of our timeliness requirements as provided in 4 C.F.R. § 21.2(b).

The significant issue exception is used where the subject matter of the protest evidences a matter of widespread interest or importance to the procurement community and the matter has not been considered on the merits in previous decisions. Southwest Marine of San Francisco, Inc.--Request for Reconsideration, B-229654.2, Jan. 19, 1988, 88-1 CPD ¶ 49. In order to prevent the timeliness requirements from becoming meaningless, this exception is strictly construed and seldom used. Id.

The issue raised here involves the technical acceptability of the awardee's proposal. This, in our view, is not of widespread interest or importance to the procurement community.

Accordingly, we will not consider the issue under the significant issue exception to our timeliness rules.

The dismissal of the protest is affirmed.

  
James F. Hinchman  
General Counsel