

Robin



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: XYZTEK Corporation--Reconsideration
File: B-233719.2
Date: January 25, 1989

DIGEST

Protest dismissed as untimely will not be reconsidered when protester's second protest letter does not discuss General Accounting Office's finding that the initial protest was untimely.

DECISION

This decision is rendered in response to the second of two protests XYZTEK Corporation has filed with us concerning the rejection of its bid as nonresponsive under invitation for bids No. R5-15-88-28 issued by the Forest Service, Department of Agriculture. We dismissed XYZTEK's initial filing as untimely and because in its second filing it has not undertaken to show that our dismissal was in error. We remain of the opinion that the matter is not for our consideration on the merits.

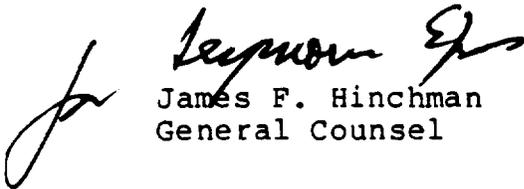
After learning that its bid had been rejected, XYZTEK initially protested to the Forest Service's contracting officer. After that official denied the firm's agency-level protest, XYZTEK filed the first of its two protests with us. We dismissed that protest because XYZTEK had not timely filed its initial protest at the agency level. Under our Bid Protest Regulations, a protest initially filed with a contracting agency must itself be timely in order for any subsequent protest filed with our Office also to be considered timely. 4 C.F.R. § 21.2(a)(3) (1988). "Timely" means filed within 10 working days of when the basis of protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Since the correspondence submitted by XYZTEK showed that the firm was advised of the basis of its protest on September 30, but that it did not

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file its protest with the Forest Service's contracting officer until October 20--more than 10 working days thereafter--its initial agency-level protest was untimely and its subsequent protest to our Office therefore was for dismissal.

Our dismissal notice was issued on November 29. By letter dated December 11, and received by us on December 13, XYZTEK essentially reiterated its protest and asked for our "review" of the procurement.^{1/} In its letter, XYZTEK made no reference to our dismissal.

Once we have dismissed a protest that file remains closed unless a party entitled to do so timely requests that we reconsider our decision. Such requests will not even be considered unless they contain "a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered." 4 C.F.R. § 21.12. To merely renew a request that we review a procurement without addressing the basis on which an earlier protest was dismissed, as XYZTEK has done, clearly does not satisfy these requirements. In the absence of a timely and detailed statement showing that our November 29 dismissal of XYZTEK's protest as untimely was erroneous as to fact or law, we have no basis upon which to reconsider our dismissal and the file remains closed.


James F. Hinchman
General Counsel

^{1/} Both of XYZTEK's protest letters refer to our "Communication No. B-141313." This is simply a letter sent to any firm which sends us, as did XYZTEK, an information copy of a protest addressed to the contracting agency. In our letter, we point out what our Bid Protest Regulations require in order for a firm to subsequently perfect a protest before our Office.