



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Air Cleaning Specialists, Inc.--Request for
Reconsideration

File: B-236936.2

Date: November 3, 1989

DIGEST

Protest filed with the General Accounting Office more than 10 working days after the protester learned of the denial of its protest to the agency is untimely notwithstanding the fact that the untimely filing was due to incorrect advice given the protester regarding the forum in which its protest should be filed.

DECISION

Air Cleaning Specialists, Inc. (ACS), requests that we reconsider our dismissal of its protest against the manner in which an oral solicitation for the purchase of electronic air cleaners from Federal Supply Schedule contracts was conducted by the Defense Industrial Plant Equipment Center, Defense Logistics Agency. We dismissed the protest as untimely because ACS did not file its protest with our Office within 10 working days of receiving a denial of the protest ACS had filed with the contracting officer. ACS argues that we should reopen the protest since it was unaware of the timeliness requirements contained in our Regulations and had filed a timely protest with the Armed Services Board of Contract Appeals (ASBCA) in accordance with instructions given by the contracting officer.

We affirm our dismissal.

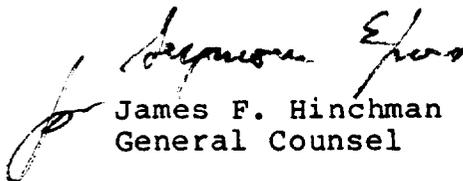
Our Regulations require a protester to file its protest with our Office within 10 working days of receiving a denial of a protest filed with the procuring agency. See 4 C.F.R. § 21.2(a)(3) (1989). While it is unfortunate that the protester was erroneously advised by the contracting agency

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that it could appeal the matter to the ASBCA and that it had 90 days to do so, we cannot permit another agency to in effect waive our timeliness standards by its erroneous advice. See Rudd Construction Inc., B-234936, Apr. 10, 1989, 89-1 CPD ¶ 367. These timeliness standards are strictly applied and exist to permit resolution of contract award disputes without undue disruption to the procurement process. Moreover, our Regulations are published in the Federal Register, and as a matter of law protesters are charged with constructive notice of their content. Therefore, protesters are presumed to know of the availability of this bid protest forum and of the rules applicable thereto. Accordingly, protesters must shoulder the responsibility of properly filing their protests and the lack of actual knowledge will not convert an untimely protest into a timely one. Amertech Indus., Inc., B-229498, Nov. 9, 1987, 87-2 CPD ¶ 469.

Here, the contracting officer's letter denying ACS' agency protest was dated June 13. ACS's protest to our Office was received on September 14, clearly far more than 10 working days after ACS received the June 13 letter. The protest was therefore untimely and was properly dismissed.

The dismissal is affirmed.


James F. Hinchman
General Counsel