

Goodland



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allen Organ Company--Request for
Reconsideration

File: B-237061.2

Date: November 3, 1989

DIGEST

Request for reconsideration of dismissal of protest as untimely is denied where the protest of an alleged solicitation defect was filed with the agency prior to closing, but was not filed at the General Accounting Office within 10 days after closing, where the agency accepted proposals and did not take any corrective action with respect to the agency-level protest.

DECISION

Allen Organ Company requests reconsideration of our decision, Allen Organ Co., B-237061, Sept. 29, 1989, 89-2 CPD ¶ ____, in which we dismissed Allen Organ's protest against alleged defects in request for proposals No. DTCG81-89-R-00616, issued by the United States Coast Guard, Department of Transportation, for the repair of the Governors Island St. Cornelius Chapel pipe organ.

We deny the request for reconsideration.

Allen Organ protested the Coast Guard's requirement for repair of the pipe organ because Allen Organ felt that replacement with its digital computer organ would be substantially superior to the repaired pipe organ and would be at a lower price. We dismissed Allen Organ's protest as untimely because, although Allen Organ timely filed an agency-level protest prior to closing, it did not file its protest at the General Accounting Office (GAO) until more than 6 weeks after closing. As we stated in our prior decision, where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely under our Bid Protest Regulations,

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must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1989). The term "adverse agency action" is specifically defined in our Bid Protest Regulations to include the agency's proceeding with the receipt of proposals in the face of the protest. 4 C.F.R. § 21.0(f); Carlisle Tire and Rubber Co., B-235413, May 12, 1989, 89-1 CPD ¶ 457. It is our general view that, once the contracting activity proceeds with accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. Id.

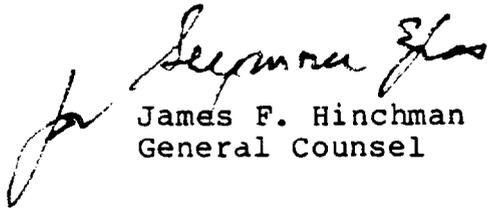
In its request for reconsideration, Allen Organ states that after it filed its agency-level protest the contracting officer asked Allen Organ if it had an organ in the local area for a demonstration. Allen Organ states it extended an invitation to the Coast Guard to visit its manufacturing plant. Allen Organ states that although three more amendments were issued extending the closing date, it did not hear from the Coast Guard again regarding its protest. On the date for closing, August 7, 1989, Allen Organ contacted the Coast Guard and verified that closing would occur that day. Three days after closing, August 10, Allen Organ wrote the contracting officer again expressing its concern that Allen Organ's agency protest seemed to have been ignored, and requesting a response concerning the disposition of its protest. Allen Organ contends that since the Coast Guard did not respond until September 18, its protest filed September 21 at GAO is timely.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrant its reversal or modification. Interstate Diesel Servs., Inc.-- Reconsideration, B-230107.3, B-230107.4, Aug. 30, 1988, 88-2 CPD ¶ 190. Repetition of arguments made during the resolution of the original protest or mere disagreement with our decision does not meet this standard. Id.

Allen Organ merely disagrees with our prior decision. Even though the contracting officer inquired about the availability of electronic organs after Allen Organ filed its agency-level protest, by accepting offers on the closing day Allen Organ was on constructive notice that the Coast Guard would not undertake the requested action. Allen Organ's letter of August 10 in fact evidences that it had actual knowledge

that the opening constituted adverse agency action. Accordingly, Allen Organ should have protested to GAO within 10 days of closing, and it was not entitled to await later confirmation from the Coast Guard that the Coast Guard was refusing to correct the alleged solicitation defect. Carlisle Tire and Rubber Co., B-235413, supra.

The request for reconsideration is denied.

James F. Hinchman
General Counsel