



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Great Lakes Towing Company--Reconsideration
File: B-245075.2
Date: August 19, 1991

Herbert A. Jaehne for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest as untimely is denied where protest was filed more than 10 days after adverse action on agency-level protest, and protester has not shown that General Accounting Office's conclusion in that regard was in error.

DECISION

The Great Lakes Towing Company requests reconsideration of our August 6, 1991, decision dismissing its protest of invitation for bids (IFB) No. DTCG80-91-B-3FA822, issued by the Department of Transportation for repairs to Coast Guard cutters.

We deny the request.

Great Lakes' protest was dismissed as untimely because the initial filing indicated that the firm had not protested within 10 working days after it received constructive notice of adverse action on its March 21 agency-level protest requesting a change in the IFB specifications, as required by our Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.2(a)(2)). As noted in our decision, where, as here, a contracting activity proceeds with the opening of bids following an agency-level protest without undertaking requested corrective action, the protester is on notice that the agency has acted adversely to its interests; timeliness thus is measured from the bid opening date. Here, documents filed with Great Lakes' protest indicated that bid opening was scheduled for May 3. Since Great Lakes did not file its protest until August 5, the protest appeared to be untimely, and we dismissed it accordingly.

Great Lakes asserts in its reconsideration request that there has been no adverse agency action to date since the contract has not been awarded, and that its protest is therefore timely. Again, however, as noted above and in our decision, the agency's opening of bids without responding to Great Lakes' March 21 agency-level protest of the IFB specifications constituted adverse agency action, and Great Lakes was required to file its subsequent protest to our Office within 10 working days. See Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221.

Great Lakes also appears to argue that there could not have been any adverse agency action because it did not file a protest with the agency. Even if we did not consider Great Lakes' March 21 request for a change in the IFB specifications to be a protest, its post-bid opening protest to our Office still would have been untimely; protests based upon alleged improprieties in a solicitation must be filed prior to bid opening. 56 Fed. Reg. 3,759, supra (to be codified at 4 C.F.R. § 21.2(a)(1)).

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel