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Comptroller General
of the United States

Washington, D.C. 20548

242282

Decision

Matter of: American Material Handling, Inc.--Reconsideration

File: B-255467.2

Date: February 25, 1994

A. Sid Goss for the protester.
Carlos E. Diz, Esq., and Barbara R. Timmerman, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where protest was untimely and protester has made no showing entitling it to an exception to our timeliness rules.

DECISION

American Material Handling, Inc. requests that we reconsider our October 25, 1993, dismissal of its protest of certain specifications in solicitation No. SSA-IFB-93-1357 issued by the Department of Health and Human Services. American Material filed an agency-level protest prior to the time set for bid opening on July 12, 1993. American Material filed its protest with our Office on October 19, 1993.

American Material's protest involves the solicitation specifications, not the contract award. In such cases, when a protest is filed initially with the contracting agency any subsequent protest to our Office must be received within 10 working days of the protester's notice of the initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1993). We consider a contracting activity proceeding with bid opening after receiving a protest to be adverse agency action. Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221. A protest is considered filed when it is received by our Office. 4 C.F.R. § 21.0(g). We dismissed American Material's protest as untimely because we did not receive it until October 19, more than 10 working days after adverse agency action, in this case, bid opening.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. Industrial Acoustics Co., Inc.-- Recon., B-246260.2, Jan. 28, 1992, 92-1 CPD ¶ 120.

In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. The only exceptions to the timeliness requirements are where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or a significant issue (one of widespread interest to the procurement community or one that has not been considered before) is involved. Id.; 4 C.F.R. § 21.2(c).

American Material has offered no explanation as to why it failed to file its protest with our Office within 10 working days of the July 12 bid opening. Although the protester argues that it was not certain what action the agency would take, the bid opening itself is considered adverse action. The protester provides no compelling reason beyond its control which prevented it from timely filing its protest after bid opening. Further, although we recognize the importance of this matter to the protester, we do not think the protest raises significant issues which are of widespread interest to the procurement community.

Accordingly, we deny the request for reconsideration.

Seymour Efros
for Robert P. Murphy
Acting General Counsel