



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** SUMMA Technology, Inc.--Reconsideration

**File:** B-259017.4

**Date:** February 6, 1995

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### DECISION

SUMMA Technology, Inc. requests reconsideration of our dismissal of its protest concerning the award of a contract to Vista Technology, Inc. under request for proposals (RFP) No. DAAH01-94-R-0068, issued by the Department of the Army.

On December 1, 1994, we dismissed the protest as untimely pursuant to 4 C.F.R. § 21.2(a)(2) (1994), which requires all protests, except those based upon apparent solicitation improprieties, to be filed, either with our Office or the contracting agency, within 10 days after the basis of protest is known or should have been known. SUMMA's protest correspondence reflected that SUMMA discovered its protest grounds during an October 7 debriefing, but waited more than 10 days, until November 23, to file its protest with our Office.

In its request for reconsideration, SUMMA asserts that our dismissal was improper because SUMMA filed an agency-level protest within 10 days of its October 7 debriefing and protested to our Office within 10 days of the agency's denial of its agency-level protest.

Under our Bid Protest Regulations, it is the protester's affirmative obligation to include in its protest all the information needed to demonstrate its protest's timeliness, and our Office may dismiss protests which are untimely on their face. 4 C.F.R. § 21.2(b). Furthermore, a protester will not be permitted to introduce for the first time in a request for reconsideration the information upon which the timeliness of the protest relies. Id.

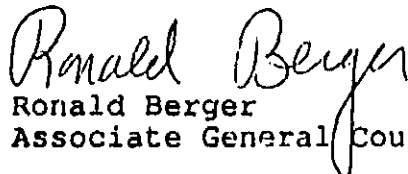
We decline to reconsider our dismissal based upon evidence of timeliness that was not presented in SUMMA's initial protest. While SUMMA apparently did pursue a timely agency-level protest, this fact could not be discerned from

the protest correspondence, as SUMMA essentially admits.<sup>1</sup> In this regard, SUMMA states that it elected not to mention the agency-level proceedings:

"in order not to bias or jeopardize a full and complete investigation of the issues delineated in our GAO protest. We presumed that GAO would contact [the agency] upon receipt of our protest and would be made aware of our prior agency-level protest."

While the protester objects to our failure to contact the agency or SUMMA itself to request further information before dismissing its protest, it is not our responsibility, but the protester's, to include in its protest all the information needed to demonstrate its timeliness.<sup>2</sup> 4 C.F.R. § 21.2(b). SUMMA claims that it could not discharge this responsibility because it was unaware of our Regulations. However, a protester's ignorance of our Regulations is not a defense to the dismissal of its protest as untimely; prospective contractors are charged with constructive notice of our Regulations, which are published in the Federal Register and appear in the Code of Federal Regulations. Detek, Inc.--Recon., B-255829.3, May 5, 1994, 94-1 CPD ¶ 294; AGM Container Controls, Inc., B-255881, Apr. 12, 1994, 94-1 CPD ¶ 243. Accordingly, because the protest was untimely on its face, it was properly dismissed. 4 C.F.R. § 21.2(b).

The request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel

<sup>1</sup>SUMMA claims that its protest letter did contain the following reference to its agency-level protest, "SUMMA letter to C. West from T. Harness dated 20 October 1994 (Ref: TAH:95:030)." Our Office could not have divined that SUMMA had filed an agency-level protest based upon this oblique reference, nor based upon the protester's statement that the agency had reevaluated offerors' proposals--which SUMMA now claims was done in response to its agency-level protest.

<sup>2</sup>SUMMA attempts to shift responsibility for the defect in its protest to our Office, alleging that it unsuccessfully attempted to contact this Office by telephone to assure that its protest would be considered. Regardless of whether this allegation is true, the protester is responsible for assuring that its protest meets all requirements to be considered.