

S. Becker



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Material Handling, Inc.—Reconsideration

File: B-261795.2

Date: August 8, 1995

DECISION

American Material Handling, Inc. requests reconsideration of our June 29, 1995, decision dismissing its protest of the terms of solicitation No. WOO-95-23 issued by the Bureau of Indian Affairs, Department of the Interior as untimely filed.

American contends that we misconstrued its protest as being against ambiguous specifications instead of against "wired" or "fixed" specifications and improperly dismissed it as untimely.

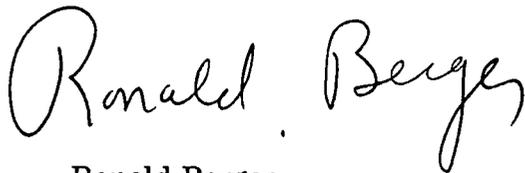
We affirm our prior dismissal.

Whether American's protest was of ambiguous or wired specifications is irrelevant since any protest of an allegedly patent specification defect must be filed prior to bid opening or, if such a protest has been filed with the agency, within 10 days of actual or constructive notice of adverse agency action on that protest. In this case, American timely protested to the agency prior to bid opening, but did not file its protest in our Office until after it received the agency's written denial of that protest, which occurred well after bid opening. Generally, a contracting activity's proceeding with bid opening constitutes adverse action and timeliness is thus measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221. Our Regulations are published in the Federal Register and Code of Federal Regulations and protesters by law are charged with constructive notice of their contents. Domation, Inc., B-228221, Sept. 28, 1987, 87-2 CPD ¶ 311. American is therefore presumed to know the timeliness requirements for filing in our Office.

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Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.-Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274. American's protest filed well outside the filing requirements was properly dismissed as untimely.

The dismissal is affirmed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger
Associate General Counsel