

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Trans

10,940

FILE: B-195353, B-195354

DATE: August 6, 1979

MATTER OF: National Designers, Inc.

DLG 02509

[Protest Concerning Timeliness of Bid Protest]
DIGEST:

Protest to GAO that is time/date stamped as received more than 1 month after postage meter postmark, and therefore more than 10 working days after basis for protest was known, is untimely and not for consideration, since it was sent by regular mail, and there is no evidence of earlier receipt at GAO.

(Fact that contracting activity received a copy of the protest from protester 2 days after mailing is not relevant, since "filing" of protest for timeliness purposes means receipt at GAO. *the regulations provide that "p3*

By letters of May 30, 1979, National Designers, Inc. (National), protests the award by the Department of the Navy of contracts under solicitations N00140-79-D-0740 and N00140-79-R-1757.

The letters were sent to this Office by ordinary first class mail with a May 30, 1979, postage meter "postmark," i.e., no United States Postal Service postmark appeared on the envelopes. In addition, they were addressed simply to the "United States General Accounting Office, Washington, D. C., 20548," with no indication that they contained any documents relating to a bid protest. Finally, the protests were recorded by the GAO Index and Files Section time/date stamp as received on July 6, 1979. Obviously, National was aware of the bases for its protests no later than the date of its letters, May 30.

Our Bid Protest Procedures require that protests of this nature be filed "not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier," 4 C.F.R. § 20.2(b)(2) (1979), and define "filed" as "receipt in the General

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Accounting Office" for protests directed to this Office for resolution. 4 C.F.R. § 20.2 (b)(3) (1979). Further, the Procedures require that the protests "must be in writing and addressed to the General Counsel * * *." 4 C.F.R. § 20.1(b) (1979) (emphasis added); the reason for this specific addressing requirement is to assure protesters that mail received by the GAO mailroom will be properly dispatched to the office within GAO responsible for handling these matters. Nonetheless, we will consider a protest as having been timely received if it can be shown by appropriate documentary evidence to have been physically present in GAO on time. See Linguistic Systems, Incorporated, 58 Comp. Gen. 403 (1979), 79-1 CPD 250. Thus, the aforementioned time/date stamp is considered prima facie evidence of the time of receipt of a bid protest at GAO, and absent affirmative evidence to the contrary to show actual earlier receipt, the time/date stamp controls. Id.

We note here that we have been informally advised that copies of the letters were in fact received by the contracting activity on June 1. However, since they were directed to GAO, not the Navy, the contracting agency's receipt is not relevant to the timeliness issue. 4 C.F.R. § 20.2(b)(3) (1979); see Fred M. Cox, Inc., B-191265, March 3, 1978, 78-1 CPD 169.

In view of the substantial disparities between the postage meter date, receipt by the agency, and our receipt, we have investigated whether there was any evidence of earlier receipt in our Office, or whether our own mailroom procedures may have contributed to the delay. Our investigation indicated that mail received in the GAO mailroom without a specific address is accumulated for no more than 1 week before it is opened and read to determine, if possible, the appropriate recipient; as of June 28, 1979, no backlog of unopened mail existed; and on July 5, the mail in question was opened, and was promptly dispatched (this is consistent with the July 6 time/date stamp). Thus, there is no evidence that the protest was physically present in GAO prior to June 28. The late receipt therefore would appear to have been caused outside GAO.

The time limitations prescribed in our Bid Protest Procedures are not waivable technicalities. As a consequence, we have strictly enforced them, and have dismissed protests as untimely without any consideration of their merits when the filing deadlines have not been met. Linguistic Systems, Incorporated, supra.

With regard to the above, because we recognized that an indeterminate amount of time will necessarily transpire between the dispatch of a protest and its receipt at GAO, our Procedures specifically caution firms that "protests should be transmitted or delivered in the manner which will assure the earliest receipt," and provide for the consideration of protests which are untimely filed as long as they are "sent by certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the final date for filing * * *." 4 C.F.R. § 20.2(b)(3) (1979). Thus, where, as here, a firm elects to use the regular mail to transmit a protest, it must be deemed to accept the risk of delay in delivery.)

Protests may be sent if they are sent...

Accordingly, the protests must be considered to have been filed in our Office for purposes of our Procedures' filing requirements on July 6. ~~Since they were therefore are untimely, they are not for consideration on the merits, and are dismissed.~~ *Since they were*

Milton J. Socolar

Milton J. Socolar
General Counsel