18223 Mr. Eisen

DECISION

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

FILE: B-203195 DATE: May 26, 1981

MATTER OF: Bill Hickman, General Contractor, Inc.

DIGEST:

Protest is untimely when only submission received from protester by GAO is filed more than 10 days after protester knew basis for protest even though that submission included copy of mailgram allegedly sent to GAO within time limitations for filing protest, since GAO has no record of having received earlier submission.

Bill Hickman, General Contractor, Inc. (Hickman), protests the award of a contract under invitation for bids DAHA28-81-B-0001 issued by the United States Property and Fiscal Office for New Jersey. Hickman complains that it was the low qualifying bidder and was entitled to award. The protest indicates that Hickman learned of the award no later than March 18, 1981.

Our Bid Protest Procedures require that a protest to our Office against the award of a contract in instances such as this one 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) (1980). The term filed means receipt in the General Accounting Office. 4 C.F.R. § 20.2(b)(3). Therefore, in order to have complied with the time requirements, Hickman had to have filed its protest with this Office by April 1, 1981. The only submission from Hickman received by this Office was time and date stamped here on May 6, 1981.

The May 6 submission included reference to, and a copy of, a mailgram dated March 18, to this Office which protested the award of the contract. However, this Office has no record of receiving the mailgram. Absent any affirmative evidence to the contrary the protest therefore must be considered to have been filed in our Office on May 6. See Linguistic Systems, Incorporated, 58 Comp. Gen. 403 (1979), 79-1 CPD 250.

[Untimely Protest of Contract Award]

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While the protester states that a copy of the March 18 mailgram was also sent to the contracting officer, the contracting agency's timely receipt of that copy would not suffice to satisfy the requirement to file a timely protest with this Office. Ling Electronics, Inc., B-199748, August 6, 1980, 80-2 CPD 96.

Since the filing date is more than 10 working days after Hickman knew the basis for protest, the matter is untimely under section 20.2(b)(2).

The protest is dismissed.

Harry R. Van Cleve
Acting General Counsel