

W. Melody



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Discount Machinery & Equipment, Inc.--  
Request for Reconsideration

File: B-223459.2

Date: July 17, 1986

## DIGEST

Dismissal of protest as untimely is affirmed on reconsideration where the issue involved should have been known to the protester more than 1 month before filing of its protest, and evidence on which the reconsideration request is based shows only that the protester continued to pursue the matter with the agency after the agency had rejected the protester's argument.

## DECISION

Discount Machinery & Equipment, Inc. (Discount), requests reconsideration of our June 24, 1986, dismissal of its protest under contract No. DAAC67-86-C-0026, awarded by the Department of the Army. We dismissed Discount's protest as untimely filed. We affirm the dismissal.

Discount, the successful offeror, protested that the award was invalid since, although the Army mailed the notice of award on May 12, the last day of the 60-day bid acceptance period, Discount did not receive the notice until May 16. Discount explained that its bid price was based on the manufacturer's prices, which were not available after May 12.

Under our Bid Protest Regulations, a protest will be dismissed as untimely if it is not received in our Office within 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). We determined Discount's protest to be untimely since the issue of the validity of the award was or should have been known to Discount as of May 16. Discount's protest submission indicated Discount had phoned the Army immediately after receiving the notice, and that the Army asserted the position that the award was valid since the notice was mailed within the 60-day acceptance period. Discount's protest was not filed in our Office, however, until June 24, more than 1 month after receiving the notice.


In its reconsideration request, Discount argues that timeliness should have been measured not from May 16, but from a June 17 phone conversation it had with the Army and a June 19 letter from the Army requesting that Discount cure its failure to proceed with the contract. This letter indicates that during the June 17 phone conversation, Discount reasserted its position that the contract was invalid.

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We affirm our conclusion that Discount's protest was untimely filed. The protest issue was whether the award was made within the acceptance period, and Discount became aware of the Army's position in this regard immediately after receiving the award notice on May 16. We view the June 17 phone conversation and June 19 letter as evidencing no more than Discount's ongoing disagreement with the Army over the issue that had arisen on May 16. A protester may choose to continue pursuing a matter with the contracting agency even after the agency has advised that it rejects the protester's position, but doing so does not toll the running of the 10-day period for filing a protest with our Office. See generally Shelf Stable Foods, Inc.--Request for Reconsideration, B-222016.2, Mar. 10, 1986, 86-1 C.P.D. ¶ 237.

In any event, we point out that we previously have held that a federal contract is formed, and the awardee's obligation arises, not when the awardee receives the award notice, but when the government releases control of the notice by placing it in the custody of the Postal Service. Department of the Treasury, Customs Service, 59 Comp. Gen. 431 (1980), 80-1 C.P.D. ¶ 313.

Our dismissal of the protest is affirmed.

*for*   
Harry R. Van Cleve  
General Counsel