



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Penn Perry, Inc.--Reconsideration

File: B-223396.2

Date: July 23, 1986

DIGEST

Dismissal of original protest is affirmed where protester failed to file protest within 10 working days after the protester knew or should have known of the basis for protest.

DECISION

Penn Perry, Inc. (Penn), requests that we reconsider our dismissal of that firm's protest against the award of a contract pursuant to solicitation No. N62477-85-B-1078, issued by the Department of the Navy (Navy), for certain repairs to Bancroft Hall, United States Naval Academy, Annapolis, Maryland. Penn protested the Navy's decision to permit the awardee, Beta Construction Company (Beta), to correct its bid upward by \$35,974. We found Penn's protest untimely because it was filed on June 17, 1986, more than 10 working days after the date the basis of the protest was first known or should have been known. See 4 C.F.R. § 21.2(a)(2) (1986); Jay Fran Corp., B-217145, Jan. 2, 1985, 85-1 C.P.D. ¶ 8.

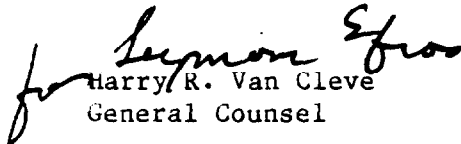
In its request for reconsideration, Penn asserts that it did not have a sufficient basis upon which to protest until June 4, 1986, when unsubstantiated rumors about a bid correction were confirmed by an officer in the construction division of the United States Naval Academy. Thus, Penn argues that its protest, filed on June 17, was filed timely within 10 working days of June 4. We disagree with Penn that the protest was filed timely and affirm our dismissal.

Penn states that prior to the award of the contract, Penn heard unsubstantiated rumors that Beta had been allowed to increase its bid by \$35,974. While we agree that these rumors may not of themselves have been enough to form a basis for protest, the notice of award dated May 20, 1986, which Penn admits it received, confirmed that Beta's bid had been corrected and, thus, provided a basis for protest. The award notice stated that Beta had received the contract and it listed an award price which Penn knew or should have known was \$35,974 more than Beta's original bid since the original bid price was announced at the public bid

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opening. Thus, upon receipt of the award letter, Penn knew or should have known its basis of protest, namely, that the Navy had allowed an upward correction of Beta's bid. Since we do not know the exact date Penn received the award notice, it is reasonable to assume that it was received within 1 calendar week of its issuance, or, in Penn's case, May 27. See Audio Technologies, Inc., B-207836, July 30, 1982, 82-2 C.P.D. ¶ 97. Therefore, since Penn's protest was not filed until June 17, 1986, which is more than 10 working days from when Penn knew or should have known of the basis for protest, Penn's protest is untimely and will not be considered on the merits. See Schlegel Associates, Inc., B-213739, June 28, 1984, 84-1 C.P.D. ¶ 688.

Our initial decision is affirmed.


Harry R. Van Cleve
General Counsel