



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dalton Construction Company, Inc.--Request
for Reconsideration
File: B-224262.2
Date: November 20, 1986

DIGEST

Decision dismissing protest as untimely on the grounds that bid documents and our decision refer to Bid Protest Regulations of different dates (1985 and 1986) is affirmed because the regulations did not change between the two dates.

DECISION

Dalton Construction Company, Inc. (Dalton), requests reconsideration of our decision in Dalton Construction Co., Inc., B-224262, Oct. 24, 1986, 86-2 C.P.D. ¶ ___, in which we dismissed as untimely its protest against the award of a contract for the repair of the sanitary sewer system at the Naval Air Station, Moffet Field, California, to Pacific Underground under invitation for bids (IFB) No. N62474-86-C-5664, issued by the Department of the Navy. We affirm the dismissal.

The bid opening was September 18, 1986. Dalton stated that it had orally advised the contracting officer after bids had been opened that Pacific's bid was nonresponsive because it did not acknowledge amendment No. 001 to the IFB. Dalton further advised that the contracting officer assured it that award would not be made to Pacific until September 30, 1986, and that it would have the opportunity to lodge its protest in writing. However, before Dalton could file its protest in writing, the contracting officer awarded the contract to Pacific.

Dalton protested these actions to our Office on October 3, 1986. Because our regulations require that protests must be received in our Office not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier, in order to be considered timely, 4 C.F.R. § 21.2(a)(2) (1986), and Dalton knew the basis of protest on September 18, but did not file its protest until

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October 3, the 11th working day, we found that the protest was untimely. The oral complaint to the contracting officer did not constitute a protest since oral protests are not provided for under the Federal Acquisition Regulation.

In its request for reconsideration, Dalton does not dispute the facts as stated above, but states that our decision refers to regulations that were not contained in the bid documents. The bid documents advised that protests would be handled pursuant to our Bid Protest Regulations dated 1985, whereas our decision refers to 1986 regulations.

The different dates merely refer to the date of publication of the Code of Federal Regulations, which generally is published on a yearly basis. Our regulations, which include the timeliness rule stated in 4 C.F.R. § 21.2(a)(2), did not change between 1985 and 1986 and the regulations referred to in the bid documents and the regulation cited in our decision are exactly the same. We find that Dalton has failed to specify any errors of fact or law that warrant reversal of our original decision that its protest was untimely; therefore it is affirmed. See 4 C.F.R. § 21.12(a).

We note that Dalton indicates that it did not receive a copy of the agency report on the date scheduled in our original acknowledgment of the protest. However, a report is not - required when the protest is untimely. 4 C.F.R. § 21.3(f).

for *Seymour Efw*
Harry R. Van Cleve
General Counsel