

C. Melody - PL



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: John Cuneo, Inc.--Reconsideration  
File: B-227983.2  
Date: August 10, 1987

## DIGEST

Protest challenging experience requirement added to solicitation by amendment properly was dismissed as untimely where it was not filed with General Accounting Office (GAO) until day after proposals were due. Invoking good cause exception to timeliness rules is not warranted where delay in filing is due to the fact that the protester and its counsel were unaware of GAO Bid Protest Regulations, and there is no indication that protester had insufficient time between receipt of amendment and proposal due date to file a timely protest since protester was able to prepare both its proposal and a letter objecting to the experience requirement by the proposal due date.

## DECISION

John Cuneo, Inc. requests reconsideration of our decision to dismiss as untimely its protest concerning request for proposals (RFP) No. JL-75024A, issued by the Tennessee Valley Authority (TVA) for an automatic fire sprinkler system in the turbine building at TVA's Sequoyah Nuclear Plant. We affirm our decision.

In its protest Cuneo objected to an experience requirement added by amendment to the RFP. The amendment was first made available to Cuneo on July 21, 1987, and called for offers to be submitted by 11 a.m. on July 22. Cuneo submitted its proposal by the required time, stating in a cover letter that it intended to "immediately take appropriate action to object to the award" if Cuneo were rejected for failure to meet the experience requirement in the RFP. On July 23, the day after proposals were due, Cuneo filed its protest with our Office.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), protests such as this one which involve alleged solicitation defects that are incorporated into a solicitation after a closing date has passed must be

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protested prior to the next closing date for receipt of proposals. Since Cuneo's protest was not filed until the day after the next proposal due date, we dismissed the protest as untimely. In addition, even if the cover letter to Cuneo's proposal is regarded as a protest to TVA, a protest filed together with a proposal does not constitute a timely protest to the contracting agency. Litton Datamedix, B-219731, Sept. 23, 1985, 85-2 CPD ¶ 322. Such a protest does not satisfy the requirement for filing before the closing date since the contracting agency has no obligation to consider proposals until after the closing date. Colorado Research and Prediction Laboratory, Inc.--Reconsideration, B-199755.2, May 11, 1981, 81-1 CPD ¶ 369.

In its request for reconsideration, Cuneo argues that the circumstances justify waiving the timeliness rules for good cause as provided in 4 C.F.R. § 21.2(c). Cuneo states that although it consulted with its attorneys as soon as the RFP amendment was received, filing the protest with our Office was delayed because neither Cuneo nor its attorneys were aware of our Bid Protest Regulations.

The good cause exception to the timeliness requirements is limited to circumstances where some compelling reason beyond the protester's control prevents it from filing a timely protest. Engineers International, Inc.--Reconsideration, B-219760.2, Aug. 23, 1985, 85-2 CPD ¶ 225. That is not the case here; rather, Cuneo simply did not meet its responsibility to comply with the timeliness requirements. See Milwaukee Industrial Clinics, S.C.--Reconsideration, 65 Comp. Gen. 17 (1985), 85-2 CPD ¶ 426. The contention that Cuneo and its counsel were unaware of our regulations provides no basis to waive the timeliness rules. Our regulations have been published in the Federal Register and the Code of Federal Regulations and protesters and their counsel therefore are charged with constructive notice of our filing rules. Ratcliffe Corp.--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

We also find unpersuasive Cuneo's argument that it had insufficient time to file a protest with our Office before the proposal due date. As noted above, although proposals were due only 1 day after Cuneo received the amendment, Cuneo was able to submit a timely proposal, together with a cover letter to TVA objecting to the experience requirement in the RFP. We see no reason to conclude that Cuneo had

insufficient time to file a timely protest when it was able to prepare both its proposal and a protest to TVA by the closing date.

The original decision dismissing the protest is affirmed.

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