



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Peter C. McEnroe, Inc.--Reconsideration
File: B-230961.2
Date: April 26, 1988

DIGEST

Protest filed more than 10 days after protester's office received denial of agency-level protest is untimely even though the protester's vice president was not aware of the initial adverse agency action until 2 weeks after it was received.

DECISION

Peter C. McEnroe, Inc. requests reconsideration of our dismissal of its protest concerning the award of a contract under request for proposals No. SSA-RFP-87-0061 issued by the Department of Health and Human Services (HHS).

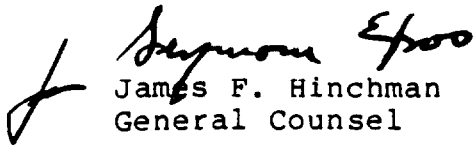
We dismissed McEnroe's protest as untimely because it was not filed within 10 working days after McEnroe knew or should have known of initial adverse agency action on its protest with the agency. 4 C.F.R. § 21.2(a)(3) (1988). McEnroe stated in its initial protest letter that its office had received the denial of its agency-level protest on March 16, 1988, but the vice president of the firm did not receive the letter until March 30 because he was out of town on business. McEnroe filed its protest with our Office on April 7.

McEnroe argues in its request for reconsideration that because its vice president did not receive the letter until March 30, its April 7 protest is timely. The fact that the protester's vice president was out of town and could not personally take action on the agency's denial of the protest does not form an excuse to our timeliness requirements. Cf. Brower Co., Inc., B-228145, Sept. 23, 1987, 87-2 CPD ¶ 293.

04203/135689

McEnroe also states the agency unfairly waited over 2 months to respond to the agency-level protest. It may be that the agency took too long to respond to the protest. As a consequence, the protester could have chosen to file its protest with our Office after waiting a reasonable time for the agency's response. React Corp., B-219642, Aug. 22, 1985, 85-2 CPD ¶ 215. However, the protester could not choose to file its protest more than 10 working days after receipt of the agency's response to its protest.

The dismissal is affirmed.


James F. Hinchman
General Counsel