



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Industrial Skills Corporation--
Request for Reconsideration
File: B-231669.3
Date: August 2, 1988

DIGEST

Although prior decision dismissing protest as untimely was based on an error of fact used to establish the timeliness period, the protest is still found to be untimely since, even based on the corrected facts, it was filed in the General Accounting Office outside the 10-day deadline.

DECISION

Consolidated Industrial Skills Corporation requests reconsideration of our decision in Consolidated Industrial Skills Corporation, B-231669.2, July 15, 1988, 88-1 CPD ¶ ___, in which we dismissed its protest as untimely. Consolidated argues that our dismissal was based on an error of fact used to establish the timeliness of its protest and that its protest should now be considered on its merits.

Although we find that we did make a factual error in our prior decision, even based on the corrected facts, the protest is still untimely.

Our prior finding of untimeliness was based on the incorrect understanding that the agency had proceeded with the procurement and had received proposals on the originally scheduled closing date for submission of initial proposals of June 10, despite Consolidated's agency-level protest. We ruled that this action constituted initial adverse agency action and we measured the timeliness of Consolidated's protest from the June 10 date.

Consolidated correctly points out in its request for reconsideration that, through an amendment to the RFP, the agency postponed the June 10 closing date indefinitely, so that there was no initial adverse agency action on June 10 from which to measure the timeliness of its protest. Rather, Consolidated now argues that the timeliness of its protest should be measured from June 20, the date it received the formal denial of its agency-level protest, yielding July 5 as the 10-day deadline within which to file its protest. Consolidated states that since it "filed" its

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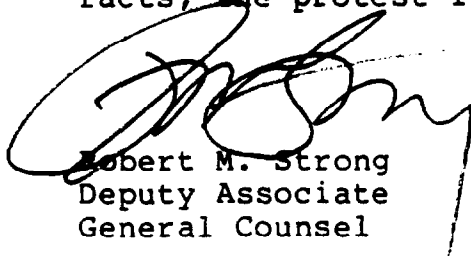
protest in our Office on June 29, it was timely and for consideration on the merits. We agree with Consolidated that under these circumstances June 20 is the correct date from which to measure the 10-day time period, as a result of which the deadline for filing its protest was July 5.

We point out, however, that in our prior decision, we also noted that it was "not clear" whether Consolidated's protest to our Office was timely even if we were to measure the timeliness period from Consolidated's receipt of the agency's formal denial of its protest. As explained below, based on information which the protester now has provided us, it is clear that the protest was untimely filed even if measured by the period with which we agree with Consolidated should apply.

Consolidated's protest was filed not on June 29, but on July 7, 2 days late. The term "filed" regarding bid protests to the General Accounting Office means receipt of the protest in the General Accounting Office. 4 C.F.R. § 21.0(g) (1988). Moreover, our time/date stamp is the only acceptable evidence of the time of receipt of materials relating to protests filed in our Office absent affirmative evidence to the contrary to show actual earlier receipt. EG&G Washington Analytical Services Center, B-231168, May 24, 1988, 88-1 CPD ¶ ____.

Although Consolidated states that it "filed" its protest on June 29, the same day that its protest letter was dated, the protest has on it a time/date stamp from our Office stating that it was received July 7, 1988, at 3:26 p.m. Although we stated in our prior decision that Consolidated's protest was received in our Office on July 7, in its request for reconsideration, Consolidated has not come forward with any affirmative evidence establishing an actual earlier receipt than that indicated by our Office's time/date stamp.

Since the protest is untimely even under the corrected facts, the protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel