

Cooper



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Usatrex International, Inc.--Reconsideration
File: B-231815.5
Date: November 29, 1988

DIGEST

Request for reconsideration is denied where protester essentially reiterates arguments initially raised and fails to show any error of fact or law that would warrant reversal or modification.

DECISION

Usatrex International, Inc. requests reconsideration of our decision Usatrex International, Inc., B-231815, et al., Oct. 14, 1988, 88-2 CPD ¶ _____. In that decision we dismissed in part and denied in part Usatrex's protest of the award of a contract to Danville Research Associates, Inc. under request for proposals (RFP) No. DE-RP03-88SF17290, issued by the Department of Energy (DOE) for technical and administrative support services for the Safeguards and Security Division of DOE's San Francisco office.

We deny the request for reconsideration.

The RFP stated that proposals were to be received at the San Francisco Operations Office of DOE no later than 3:00 p.m. local time on January 11, 1988. Usatrex alleged that Danville's hand-delivered proposal was not received, or time/date stamped, at the seventh floor mail room by the 3:00 p.m. closing time for receipt of proposals. Usatrex argued that a transcript of a presentation to the preproposal conference, which had been included in a letter sent to all offerors, in effect amended the solicitation to require proposals to be received at the seventh floor mail room of the San Francisco Operations by the closing time for receipt of proposals.

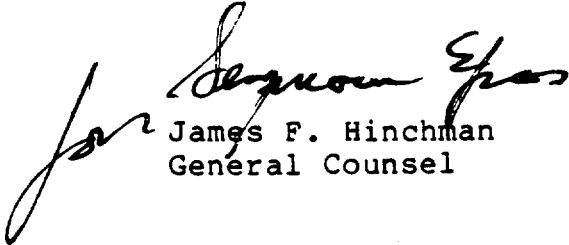
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We found Usatrex's allegations to be untimely since Usatrex did not file its protest within 10 working days after the basis for its protest was known. We noted that Usatrex's own affidavits specifically acknowledged that it was aware of DOE's acceptance of Danville's proposal on January 11, the closing date for receipt of proposals, when officials of the firm overheard the contracting officer state that she would accept Danville's proposal if it had been delivered to the guard's desk at 3:00 p.m., and that Usatrex's representatives then observed that Danville's proposal had been hand-marked with the notation "3:00 p.m." In addition, we found that Usatrex had not refuted DOE's sworn statement that based on a telephone conversation between Usatrex and the contracting officer on or about March 29, Usatrex knew that Danville had been included in the competitive range. Since Usatrex did not protest to our Office until June 27, we dismissed the issue as untimely.

In its request for reconsideration, Usatrex reiterates its initial argument that it had no reason to file its protest until it received notice on June 20 that award had been made to Danville. Usatrex argues that there is no evidence in the record to establish that it had actual knowledge that Danville's proposal had been accepted by DOE on January 11, or that it had official knowledge of Danville's inclusion in the competitive range as of its telephone conversation with the contracting officer on or about March 29. We see no basis to disturb our prior holding that under the circumstances here, Usatrex failed to file a timely protest.

Usatrex has not refuted, in either its initial protest or the reconsideration request, the sworn statement from the contracting officer that Usatrex knew that Danville had been included in the competitive range as of its telephone conversation with the contracting officer on or about March 29. Moreover, the March 29 conversation was consistent with the contracting officer's prior statement, witnessed by Usatrex on the date that initial proposals were due, that delivery of Danville's proposal to the guard desk was acceptable. Under these circumstances, it was unreasonable for Usatrex to delay filing its protest until it received yet further notice from DOE that Danville had been included in the competitive range. In our view, Usatrex's decision not to raise its challenge to acceptance of Danville's proposal until after award was made, despite earlier notice from the contracting officer that Danville had been included in the competitive range, was inconsistent with the intent of our timeliness rules to minimize disruption to the procurement process and allow the contracting agency an opportunity to cure any defects in the process as expeditiously as possible.

A party requesting that we reconsider a bid protest decision must show that our prior decision contains either errors of fact or law that warrant its reversal or modification. 4 C.F.R. § 21.12 (1988). Since Usatrex has not shown any errors of fact or law in our initial decision, the request for reconsideration is denied.

James F. Hinchman
General Counsel