

Rehauitz



The Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment, Inc.--
Reconsideration
File: B-233541.2
Date: April 3, 1989

DIGEST

General Accounting Office will not consider a protest filed more than 10 working days after the protester receives oral notification of the denial of its agency-level protest.

DECISION

Discount Machinery & Equipment, Inc. requests that we reconsider our decision in Discount Machinery & Equipment, Inc., B-233541, Feb. 14, 1989, 89-1 CPD ¶ _____, in which we dismissed Discount's protest of the rejection of its bid under invitation for bids (IFB) No. 4577, issued by the Federal Bureau of Investigation (FBI) for a surface grinder and a universal tool and cutter grinder.

We deny the request for reconsideration.

Discount filed an agency-level protest against the rejection of its bid on October 14. On October 16, the agency orally notified Discount of the denial of its agency-level protest and confirmed its denial in writing by letter dated October 18. Discount then filed its protest with our Office by letter dated October 24, and received by our Office on November 9. We dismissed the protest as untimely because Discount had been orally informed of the denial of its agency-level protest on October 18 and it failed to file its subsequent protest with our Office within 10 working days of that date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988).

Discount does not dispute any of the chronology in our original decision and admits that the agency orally notified it of the denial of its protest on October 18. Discount argues that it should have 10 working days to file a protest

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with our Office from the time it receives the agency's written denial, without regard to the time of receipt of oral notification of the agency's denial of its protest. We disagree.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988), provide that when a protest is initially filed with a procuring agency, any subsequent protest to our Office must be filed within 10 working days of initial adverse agency action. This is defined as any action or inaction that is prejudicial to the position taken in the protest filed with the agency. 4 C.F.R. § 21.0(f). We have recognized that oral notification of the denial of an agency-level protest is sufficient to start the 10 working-day period running and that a protester may not delay filing its protest until receipt of written confirmation. See Sheraton South Hills, B-225092, Nov. 10, 1986, 86-2 CPD ¶ 548.

Discount, by its own admission, was orally advised by the FBI on October 18 that its protest was denied. Since Discount's protest was received in our Office on the 16th working day after Discount was notified that its agency-level protest had been denied, its protest is untimely and will not be considered on the merits.

Accordingly, the request for reconsideration is denied.

for 
James F. Hinchman
General Counsel