



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Rudd Construction Incorporated

**File:** B-234936

**Date:** April 10, 1989

### DIGEST

Protest of the rejection of a bid as late is untimely when filed more than 10 working days after basis of protest is known.

### DECISION

Rudd Construction Incorporated protests the rejection of its bid as late under invitation for bids (IFB) No. DTFA11-89-B-00109, issued by the Federal Aviation Administration (FAA), for remodeling the air traffic control tower at Pitkin County Airport in Aspen, Colorado.

Bid opening under this IFB, a total small business set-aside, was scheduled for March 2, 1989, at 2 p.m., in Seattle, Washington. The IFB provided that both mailed and hand-carried bids were to be addressed to the FAA building in Seattle, with the address including a box number and a specific zip code for mailed bids and a floor number and a different zip code for hand-carried bids.

Rudd chose to deliver its bid via Federal Express, with Federal Express guaranteeing delivery by 10:30 a.m. on March 2. On March 1, when preparing the Federal Express airbill, Rudd called the FAA and asked which zip code should be used for hand-carried bids. Rudd states it was told to use the zip code for mailed rather than hand-carried bids, and it relied on this conversation in preparing the airbill. Federal Express was unable to deliver Rudd's bid by bid opening on March 2 because the wrong zip code was used. On March 3, the FAA informed Rudd that its bid was rejected as late. This protest followed on March 27.

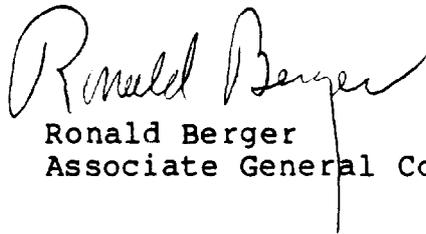
Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), require that a protest must be filed within 10 working days of the date the protester knew or should have known of the basis for protest. Rudd was informed on March 3 that its bid was rejected as late and accordingly, having been

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informed of its basis for protest, it had 10 working days from that date to protest the rejection. Rudd did not file its protest with our Office until March 27, the 16th working day after it knew its basis for protest. Therefore, the protest is untimely. See Turbo Mechanical, Inc., B-232483, Jan. 9, 1989, 89-1 CPD ¶ 14.

Rudd argues that the reason it did not file its protest with our Office until March 27 was that it had to wait approximately 3 weeks to receive directions for filing a protest from the agency. However, a protester's lack of actual knowledge of our Bid Protest Regulations is not a defense to dismissal of its protest as untimely because prospective contractors are on constructive notice of our regulations, since they are published in the Federal Register and Code of Federal Regulations. See Pacific Propeller, Inc., B-229868, Dec. 30, 1987, 87-2 CPD ¶ 649. Moreover, the timeliness requirements of our Bid Protest Regulations may not be waived by actions taken by the contracting agency. Id.

Accordingly, the protest is dismissed.



Ronald Berger  
Associate General Counsel