

Vickers



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Kahn Industries, Inc.--Request for Reconsideration

**File:** B-237322.2

**Date:** October 31, 1989

## DIGEST

Dismissal of protest against a solicitation specification filed with the contracting officer prior to the closing date for the receipt of initial proposals as untimely, where the agency received proposals on the scheduled closing date without taking corrective action and the subsequent protest to the General Accounting Office was filed more than 10 working days later, is affirmed on reconsideration.

## DECISION

Kahn Industries Inc., requests reconsideration of our dismissal on October 11, 1989, of its protest against allegedly restrictive specifications contained in solicitation No. DAAJ02-89-Q-00027, issued by the U.S. Army Materiel Command. We dismissed the protest as untimely because it was not filed with our Office within 10 working days of initial adverse agency action.

Kahn filed a protest with the agency against the allegedly restrictive specifications on July 14, 1989, three days prior to the scheduled date for receipt of proposals. Closing was held on July 17, 1989. Kahn received the denial of its agency-level protest on September 25, 1989, and filed its protest with our Office on October 6, 1989.

Under our Bid Protest Regulations, protests initially filed with the contracting agency must be filed at the General Accounting Office within 10 working days of the protester's receipt of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1989). Our regulations define "adverse agency action" as encompassing any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency, including a procurement action such as the opening of bids or receipt of

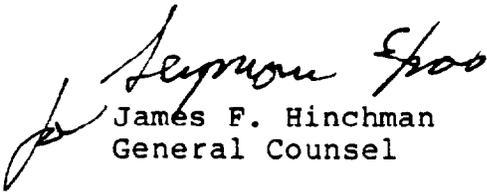
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proposals. 4 C.F.R. § 21.0(f). Thus, an agency's receipt of proposals on the scheduled closing date without taking any corrective action in response to a protest has been held to constitute such initial adverse agency action. Vickers, Inc., B-230955, May 31, 1988, 88-1 CPD ¶ 510.

In this case the fact that the agency considered the protest following the closing date for receipt of proposals does not alter the situation. Kahn's submission does not indicate he was given any assurance by the agency that award was being withheld while his protest was being considered. Therefore, the agency's proceeding with the scheduled closing clearly constituted initial adverse action within our regulation. The Peddler's Motor Inn--Request for Recon., B-227110.2, B-227111.2, Aug. 17, 1987, 87-2 CPD ¶ 166.

To be timely, Kahn should have protested here within 10 working days of the closing date. Kahn's protest is untimely because it did not file its protest with our Office until October 6, more than 2 months after the closing date, when the initial adverse action on its agency-level protest occurred. DCX, Inc., B-232931, Nov. 30, 1988, 88-2 CPD ¶ 542.

The dismissal is affirmed.

  
James F. Hinchman  
General Counsel