

Gilbrook



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Kaydon Corp.--Request for Reconsideration  
**File:** B-237062.2  
**Date:** November 21, 1989

## DIGEST

Prior dismissal of protest as untimely is affirmed where protest that solicitation should not have been set aside for small business was not filed in the General Accounting Office (GAO) until after award. The alleged advice of the contracting officer to delay filing does not result in waiver of the timeliness requirements of GAO's Bid Protest Regulations.

## DECISION

Kaydon Corp. requests that we reconsider our September 22, 1989, dismissal of its protest against the award of a contract under solicitation No. DAAA09-89-R-0337, issued by the United States Army Materiel Command. We affirm the dismissal.

In its protest, Kaydon contended that the solicitation should not have been set aside for small business. We dismissed the protest as untimely because the set-aside was apparent from the solicitation but was not protested until after contract award. Our Bid Protest Regulations require that such a protest based upon an alleged apparent impropriety in a solicitation be filed before bid opening. 4 C.F.R. § 21.2(a)(1) (1989); Detroit Armor Corp.--Request for Recon., B-227432, July 9, 1987, 87-2 CPD ¶ 25.

Kaydon requests we reconsider our dismissal because it contacted the contracting officer before bid opening to challenge the reasonableness of the set aside, but was advised to delay filing a protest until after award.

Assuming, arguendo, the protester's claim that it was misinformed is true, the timeliness requirements of our

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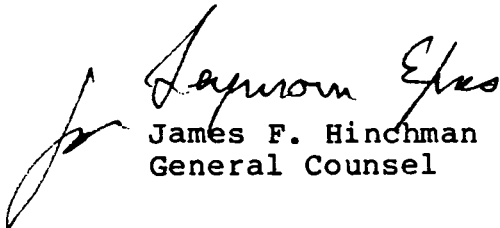
Regulations may not be waived by actions taken by the contracting agency. Koch Constr. Co., Inc.--Recon., B-232585.2, Nov. 7, 1988, 88-2 CPD ¶ 452. Further, a protester's apparent lack of actual knowledge of our Regulations does not permit consideration of its untimely protest. Our Regulations were published in the Federal Register and appear in the Code of Federal Regulations. Protesters are charged with constructive notice of their contents. Id.

Kaydon also notes that only one small business concern quoted on this solicitation and the awardee's price was 52 percent higher than the last award for this item for a similar quantity in November 1985.

To the extent that Kaydon is questioning the reasonableness of the awardee's price, a determination of price reasonableness is a matter of judgment within the administrative discretion of the contracting officer, and we will not question such a determination unless it is unreasonable or there is a showing of fraud or bad faith by the agency. U.S. Elevator Corp., B-224237, Feb. 4, 1987, 87-1 CPD ¶ 110. Kaydon has not alleged that the determination was made fraudulently or in bad faith. The record indicates that the contracting officer noted a substantial increase in material prices and determined that the awardee's price was fair and reasonable based on a Defense Contract Audit Agency Report and a Defense Contract Administration Services Management Area field review. Nothing in the record providing any basis to question this conclusion.

Finally, we note that the fact that only one bid was received from a small business has no bearing on the validity of the award in view of the fact that the price of that bid was properly determined to be reasonable. Id.

Accordingly, the prior dismissal is affirmed.

  
James F. Hinchman  
General Counsel