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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tribe Fleet, Inc.--Request for
Reconsideration

File: B-239080.2

Date: April 16, 1990

Race Foster, for the protester.
Carl S. Anderson, for Florida Offshore, Inc., an interested
party.
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Dismissal of protest as untimely is affirmed where record
confirms that protest was filed more than 10 days after
agency orally notified protester of basis for protest.

DECISION

Tribe Fleet, Inc., requests reconsideration of our March 30,
1990 dismissal of its protest of the award of a contract
under invitation for bids No. F08637-89-B-0068, issued by
the Department of the Air Force for watercraft maintenance.
We dismissed the protest as untimely filed.

We affirm the dismissal.

Tribe, the fourth low bidder under the solicitation,
protested the reinstatement of the second and third low
bidders, whose bids initially had been determined nonrespon-
sive for failure to include unit prices as required by the
solicitation. (The low bid also apparently had been found
nonresponsive for other reasons.) Tribe's protest submis-
sion, received March 28, indicated that it had learned of
the reinstatement of the bids during the week of March 5.
Tribe apparently telephoned the office of its congressman to
complain later that week, and followed up the phone call
with a letter dated March 13, which Tribe included in its
protest submission. On March 14, Tribe received a letter
from the contracting officer, dated March 9, stating that
Tribe no longer was in line for award. Based on this
letter, Tribe filed its protest letter (dated March 27) in
our Office on March 28.

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Our Bid Protest Regulations require that protests be filed not later than 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). We determined, based upon Tribe's submission, that Tribe learned it was no longer in line for award by March 9, the end of the week during which Tribe first contacted its congressman about the matter, and the agency has confirmed that the contracting officer so informed Tribe by telephone on March 7. We concluded that Tribe's protest was untimely because it was not filed with our Office until at least 13 working days after Tribe learned of its basis for protest.

Tribe claims it was not aware of its basis for protest until March 14, the date it received the agency's written notification that it no longer was in line for award; Tribe asserts that the agency's prior telephonic notification was insufficient to give it the specific knowledge of the agency's intended action necessary to start the 10-day period running. However, as indicated above, the documents Tribe submitted with its protest indicate that the firm complained to its congressman about the agency's intended action shortly following its receipt of the oral notification. This clearly shows that Tribe was on notice of its basis for protest at that juncture. See MIDDCO, Inc.-- Request for Recon., B-235587.2, Oct. 31, 1989, 89-2 CPD ¶ 402.

The dismissal is affirmed.

for Ronald Bergen
James F. Hinchman
General Counsel