

Miller



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

Decision

Matter of: Tecniventas, S.A.--Reconsideration
File: B-240323.2
Date: October 19, 1990

Celma Moncada, Esq., Moncada & Moncada, for the protester.
Albert J. Joyce, III, Esq., Panama Canal Commission, for the agency.
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior dismissal for untimeliness is affirmed where the initial protest was filed more than 10 working days after the contracting agency denied agency-level protest; protester's continued pursuit of the protest with the agency does not toll timeliness requirements.

DECISION

Tecniventas, S.A. requests that we reconsider our dismissal of its protest against the award of a contract under an invitation for bids (IFB) issued by the Panama Canal Commission for the removal and installation of metal grids on the Locks Tunnel Doors at Gatun Locks, Panama.

We affirm our dismissal.

Initially, the IFB was issued on June 26, 1989; Tecniventas submitted a bid on July 26. On August 25, the Commission canceled the solicitation due to budgetary constraints. In February 1990, the Commission issued a new IFB for the same construction work. By letter dated February 22, Tecniventas protested to the Commission alleging that the Commission had canceled the prior solicitation in bad faith.^{1/}

^{1/} Apparently Tecniventas submitted its original bid for consideration under the new solicitation; however, by letter dated March 14, the Commission informed Tecniventas that it was not the low bidder for the contract.

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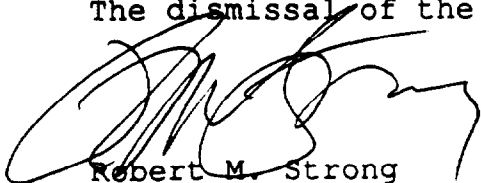
The Commission's Acquisition Regulations provide that protests to the Commission must be filed within 10 working days after the basis for protest is known; since Tecniventas did not file its protest until almost 6 months after the IFB was canceled, the Commission dismissed the protest as untimely by letter dated March 29. By letter dated April 14, Tecniventas asked the Commission to reconsider its protest, arguing that it was not untimely. By letter dated June 6, the Commission refused to do so.

On July 5, this Office received a formal protest from Tecniventas dated June 19; in its protest, Tecniventas essentially contended that the Commission had acted in bad faith. By letter dated July 6, we dismissed the protest as untimely because it was filed more than 10 working days after Tecniventas received the Commission's letter dated March 29 dismissing its initial agency-level protest. On reconsideration, Tecniventas argues that its protest to our Office was timely because it was filed within 10 working days of the Commission's June 6 response to Tecniventas's request for reconsideration.

Where, as here, a protest is first filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1990); Rocky Mountain Helicopters, Inc.--Recon., B-231898.2, Aug. 22, 1988, 88-2 CPD ¶ 169. In this case, the Commission's March 29 dismissal constituted initial adverse agency action; accordingly, the 10-day period began to run when Tecniventas received the March 29 letter. The fact that Tecniventas pursued agency-level reconsideration action before filing its protest with our Office did not toll our timeliness requirements; once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the

agency. Id. Since Tecniventas did not file its protest with our Office within 10 days of the Commission's initial dismissal, its protest was clearly untimely.2/

The dismissal of the protest is affirmed.



Robert M. Strong
Associate General Counsel

2/ We note that, even under the protester's argument that timeliness should be counted from the date of the Commission's denial of the protester's agency-level reconsideration request, Tecniventas's protest to this Office was nonetheless untimely since it was received on July 5, more than 10 working days after the Commission's June 6 response. See 4 C.F.R. § 21.2(a)(3).