



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hilda A. Phelps--Reconsideration

File: B-242329.2

Date: March 12, 1991

Hilda A. Phelps for the protester.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protester's lack of knowledge concerning jurisdiction of
General Services Administration Board of Contract Appeals and
the filing requirements of the General Accounting Office is
not a basis for waiving timeliness requirements since
protester, as a matter of law, was on constructive notice of
these matters because they are set forth in regulations
published in the Federal Register.

DECISION

Hilda A. Phelps requests reconsideration of our dismissal, as
untimely, of her protest under Forest Service solicitation
No. R8-90-22. We affirm our dismissal of the protest.

Ms. Phelps' protest involved the Forest Service's award of a
contract to another firm on November 16, 1990. Ms. Phelps
alleged her proposal was technically acceptable and lower
priced, and that she should have received the award. The
protest record showed that the protester was advised of the
award decision during a telephone conversation with the
contracting officer on either November 16 or November 19, and
that the Forest Service mailed its written notice of the award
on November 19. Ms. Phelps' protest to our Office was filed
on December 11.

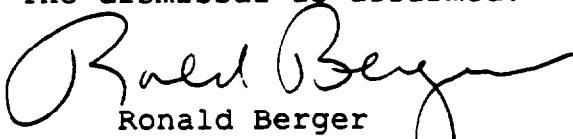
Since our Bid Protest Regulations require that protests such
as the one at issue here be filed no later than 10 working
days after the protester knew, or should have known, of the
basis for protest, whichever is earlier, see 4 C.F.R.
§ 21.2(a)(2) (1990), we determined that Ms. Phelps' protest
had to be filed by December 4 in order to be timely. This
determination was based on the assumption that the telephone
conversation took place on November 19; 10 working days from
that date is December 4. A protester's receipt of oral
information forming the basis of the protest is sufficient to

start the 10-day time period running, since written notification is not required. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. We also note that even if notice of the award was provided only by the November 19 letter and we presume that the notice letter took 1 week to reach the protester, the time for filing would have commenced on November 26; 10 working days from that date is December 10.

In her request for reconsideration, Ms. Phelps argues that the solicitation instructed contractors to file protests with either the General Services Administration Board of Contract Appeals (GSBCA) or with the General Accounting Office (GAO). Since she did not have an address for our Office she initially filed her protest with the GSBCA and did not file her protest with us until after it was dismissed by the GSBCA on December 5. The protester argues, on this basis, that she has done everything she could to comply with the applicable regulations, and that the protest should be considered timely.

The solicitation contained the standard Federal Acquisition Regulation (FAR) clause concerning the service of bid protests, FAR § 52.233-2. This clause requires that copies of any protest filed with the GSBCA and our Office be served on the contracting officer and provides the location where the copy for the contracting officer should be filed. The clause does not address the jurisdictional limitations of the GSBCA or GAO. However, to the extent Ms. Phelps was misled by the inclusion of the reference to the GSBCA, this does not alter the untimeliness of the protest. Protesters are charged with constructive knowledge, even where they do not have actual knowledge, of government regulations when these regulations have been published in the Federal Register. Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947). Section 33.102 of the Federal Acquisition Regulation identifies the statutory jurisdiction of the GSBCA and was published in the Federal Register. Our Bid Protest Regulations, including the timeliness requirements, also were published in the Federal Register. Thus, as a matter of law, the protester is deemed to be aware of both the GSBCA's jurisdiction and our filing requirements. See Data Processing Serv., B-225443.2, Dec. 18, 1986, 86-2 CPD ¶ 683. In this regard, filing with the GSBCA does not toll the running of our filing requirements. Electrophysics Corp., B-240545, Aug. 10, 1990, 90-2 CPD ¶ 119.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel