



Comptroller General
of the United States

Washington, D.C. 20548

Gary
147853

Decision

Matter of: Fatigue Technology, Inc.--Reconsideration

File: B-250251.2

Date: October 15, 1992

Robert A. Brunette, Esq., for the protester,
Stephen J. Gary, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

When a protest appears untimely on its face and is dismissed for that reason, General Accounting Office will not consider the dismissal based on facts and information previously in protester's possession.

DECISION

Fatigue Technology, Inc. requests reconsideration of our September 10, 1992, dismissal of FTI's protest of the terms of solicitation No. F34601-92-R-57393, issued by the Department of the Air Force. FTI asserts that, in finding its protest untimely, we failed to consider certain information.

We deny the request.

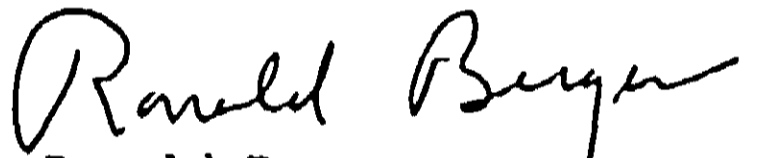
We dismissed FTI's protest because it was filed with our Office more than 10 working days after FTI received actual or constructive knowledge of adverse action by the Air Force on FTI's agency-level protest. We explained that where, as in FTI's case, a protest initially has been filed with a contracting activity, any subsequent protest to our Office must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. §§ 21.2(a)(3) and 21.0(f) (1992); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58. Once the contracting activity proceeds with opening bids or accepting offers, the protester is on notice that the contracting activity will not undertake the requested corrective action; timeliness thus is measured from this point rather than from the receipt of a subsequent formal denial of the agency-level protest. Scopus Optical Indus., B-238541, Feb. 23, 1990, 90-1 CPD ¶ 221.

In seeking reconsideration, FTI argues that after the Air Force received its agency-level protest, and subsequent to the solicitation closing date, the contracting officer and other Air Force officials continued to represent to FTI that its protest was being actively considered. Based on these circumstances, FTI asserts, its protest was in fact timely.

Our Bid Protest Regulations provide that a protester has an obligation to provide information establishing the timeliness of its protest when on its face the protest otherwise appears untimely. 4 C.F.R. § 21.2(b); Contact Int'l Corp.--Recon., B-246937.2, Feb. 5, 1992, 92-1 CPD ¶ 150. Thus, when a protest appears untimely on its face and is dismissed for this reason, we will not reconsider our dismissal based on facts and information that were in the protester's possession and could have been provided to our Office when the protest was filed. Contact Int'l Corp.--Recon., supra; Management Engr'g Assocs.--Recon., B-245284.2, Oct. 1, 1991, 91-2 CPD ¶ 276.

FTI's protest appeared untimely on its face, and the firm could have, but did not, provide in its protest the information it now presents which it believes shows its protest was timely. Therefore, we decline to consider FTI's request. Contact Int'l Corp.--Recon., supra.

The request is denied.


Ronald Berger
Associate General Counsel