

Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of:

pH-logistics, Inc.--Reconsideration

File:

B-244162.2

Date:

June 27, 1991

Fred Schattenstein for the protester.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DICEST

1. The General Accounting Office (GAO) affirms dismissal of a protest as untimely filed, even though the protester claims it was unfamiliar with the timeliness requirements of GAO's Bids Protest Regulations and that the procuring agency failed to inform the protester of the requirements of the regulations, since the regulations are published in the Federal Register and the protester is therefore on constructive notice of their contents.

2. The fact that a protester is a small business provides no basis for waiving the timeliness requirements of the General Accounting Office Bid Protest Regulations because the only two exceptions recognized by the regulations to the timeliness rules—for protests presenting significant issues and for good cause—are not applicable.

DECISION

pH-logistics, Inc., requests that we reconsider our decision in pH-logistics, Inc., B-244162, May 29, 1991, 91-1 CPD 9 , which dismissed the firm's protest of the rejection of its bid as unbalanced under invitation for bids No. 688-17-90, issued by the Department of Veterans Affairs (VA). We found that the pH-logistics' protest was filed more than 10 working days after it learned of the denial of its agency-level protest and was thus untimely filed under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1991).

We affirm the dismissal.

pH-logistics, in requesting reconsideration, does not dispute that its protest to our Office was filed more than 10 working days after it learned of VA's denial of its initial agencylevel protest. Rather, the firm objects that it was never informed by VA of the timeliness requirements of our Bid Protest Regulations, and that as a small business firm it should be entitled to an exception to our timeliness requirements.

As stated in our prior decision, our regulations contain strict rules requiring timely submissions of protests, and since our regulations are published in the Federal Register, protesters are charged with constructive notice of their contents. Milwaukee Indus. Clinics, S.C.--Recon., 65 Comp. Gen. 17 (1985), 85-2 CPD ¶ 426. Thus, unfamiliarity with our regulations does not excuse an untimely filing, see A/C Pipe, Inc.--Recon., B-204530.2, Nov. 4, 1981, 81-2 CPD ¶ 386, even where the procuring agency gives erroneous advice or fails to give advice as to the requirements of cur regulations. Miller Gove Travel Assocs.--Recon., B-236069.2, Aug. 16, 1989, 89-2 CPD ¶ 146. Accordingly, the protester's complaint that it was not informed or was misinformed by VA as to the requirements of our regulations does not provide any basis upon which to reconsider our prior decision.

p!! ·logistics also requests that we waive our timeliness rules because the firm is a small business. The only two exceptions recognized by our Bid Protest Regulations provide for the consideration of protests that are not timely filed when a significant issue is raised or for good cause. See 4 C.F.R. § 21.2(c). These exceptions, however, are strictly construed and rarely used in order to prevent the timeliness rules from becoming meaningless. Air, Inc.—Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. That a protester is a small business does not, in itself, provide a basis for excusing the untimely filing of a protest.

The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ____, 90-2 CPD ¶ 310. pH-logistics' protest of the rejection of its bid as unbalanced does not meet this standard; we have decided numerous cases discussing unbalanced bids. See e.g. Riverport Indus., Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108.

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The good cause exception is limited to situations where some compelling reason beyond the protester's control prevented the protester from filing a timely protest. Milwaukee Indus. Clinics, S.C.--Recon., 65 Comp. Gen. 18, supra. The untimely filing of a protest because of the protester's unfamiliarity with our published regulations does not meet this standard. Id.

The dismissal is affirmed.

Robert M. Strong

Associate General Counsel