



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Golight Inc.

**File:** B-401866

**Date:** September 10, 2009

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Jerry Gohl for the protester.

Elizabeth M. Grant, Esq., Defense Logistics Agency, for the agency.

Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest of award that was filed more than 10 calendar days after receipt during business hours of the agency's email notification of award is untimely; for purposes of our timeliness rules, the mechanical receipt of an email during regular business hours constitutes notice of basis for protest.

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### DECISION

Golight Inc. of Culbertson, Nebraska, protests the award of a contract to K&H Industries, Inc. of Angola, New York, under solicitation No. SPM8E8-09-R-0001, issued by the Defense Logistics Agency for remote-controlled spotlights.

We dismiss the protest as untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2009). Moreover, the protest must set forth all information establishing the timeliness of the protest. *Id.* § 21.1(c)(6). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.—Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

Here, the agency emailed its decision informing the protester of the award to K&H on Friday, August 21, 2009, at 2:24 p.m., eastern time. The protester filed its protest

with our Office on Thursday, September 3, more than 10 calendar days after the date it received the agency's notification of award to another firm.<sup>1</sup> The protester, which is in the central time zone, does not contend that the agency's email was received after the firm's business hours on August 21, but bases the timeliness of its protest filing upon the fact that the protester's employee (to whom the email was directed) had left for the day and did not open the email until Monday, August 24.

For the purposes of our timeliness rules, however, the mechanical receipt of the email during the firm's regular business hours on August 21 constituted notice of the agency's award. See International Res. Group, B-286663, Jan. 31, 2001, 2001 CPD ¶ 35 at 5 n.7; cf. Supreme Edgelight Devices, Inc., B-295574, Mar. 4, 2005, 2005 CPD ¶ 58 at 3 (receipt of an agency-level protest decision on a non-business day did not constitute actual or constructive knowledge of initial adverse agency action). Because the email was available to be opened during regular business hours by Golight on August 21, we consider the email to have been received by the protester on that date. Accordingly, we find that Golight knew or should have known the basis of its protest allegations on August 21, when it received the agency's email notification of award, and, to be timely filed, the protest was required to be filed within 10 calendar days of that date, but was not. See American Office Servs., Inc. B-290511, July 5, 2002, 2002 CPD ¶ 122 at 4 n.3 (protester on notice of protest basis as of date of receipt of agency email containing proposal deficiency information). Because the protest was not timely filed, it is dismissed.

Daniel I. Gordon  
Acting General Counsel

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<sup>1</sup> Golight did not receive a debriefing from the agency.