



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consolidated Management Services, Inc.--Reconsideration

File: B-270696.2; B-270696.3

Date: February 13, 1996

J. William Bennett, Esq., for the protester.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Prior decision dismissing protest as untimely is affirmed where protest as filed was untimely on its face; fact that on reconsideration protester asserts that it provided incorrect factual information to counsel, inadvertently indicating that protest was untimely, and that protest in fact was timely filed based on actual timing of events, provides no basis for reconsideration of dismissal.

2. Protest challenging rejection of bid is untimely when filed more than 14 calendar days after the protester was informed orally by contracting officer of adverse agency action; protester may not wait for written confirmation of oral advice to file protest.

DECISION

Consolidated Management Services, Inc. (CMS) requests reconsideration of our December 15, 1995 dismissal of its protest against the rejection of its bid under invitation for bids (IFB) No. DAKF61-95-B-0078, issued by the Department of the Army for meals, lodging, and transportation. We dismissed the protest as untimely because it was filed more than 14 days after the protester knew, or should have known, the basis for protest. CMS contends that its protest should be reinstated since it made a mistake in its original protest filing, inadvertently misleading us to conclude that its protest was untimely. Alternatively, CMS has filed a second protest challenging the rejection of its bid which CMS contends is timely, as it was filed within 14 days of its receiving formal written notification from the contracting officer that its bid had been rejected.

We affirm our prior dismissal.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based on alleged improprieties in a solicitation--such as CMS' contention that the Army improperly rejected its bid--must be filed no later than 14 calendar days after the protester knew, or should have

known, the basis for protest, whichever is earlier. Section 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(2)).

In this case, we dismissed CMS' protest because in its initial submission, the protester stated that it did not file its protest until "15 calendar days" after the date "CMS became aware of the adverse actions of the [c]ontracting [o]fficer." In this regard, CMS contended that it discovered its basis for protest during a November 22 telephone call with the contracting officer concerning an agency-level protest by another bidder challenging the acceptance of CMS' bid. Since CMS' protest was not filed until December 7--more than 14 calendar days later--we dismissed the protest.

On reconsideration, CMS does not dispute that based on its original protest, our prior dismissal for untimeliness was proper. Instead, CMS contends that its original protest should be reinstated for consideration on the merits since, after advising CMS of our dismissal, the protester's attorney learned that "the facts stated in the initial protest submission . . . were misunderstood and misstated by counsel in the protest." CMS now asserts that contrary to its earlier representations, the protester did not learn any basis for protest during the November 22 telephone conversation with the contracting officer because the contracting officer refused to discuss how the agency would rule on the competitor's protest pending a legal opinion by the agency counsel. On reconsideration, CMS, for the first time, contends that it learned its basis for protest in a subsequent telephone conversation with the contracting officer, which took place on December 5. CMS further contends that its attorney misunderstood the actual sequence of events which transpired in this case because the employee who had the two telephone conversations with the contracting officer was on vacation when this protest was filed, and consequently the facts were incorrectly relayed to the protester's attorney by another employee.

The fact that the protester's key employee was on vacation does not excuse CMS' mistaken representation of this case's chronology; in order to satisfy our statutory mandate to resolve protests expeditiously and to maintain our role as a meaningful, efficient protest forum, we expect all parties to prepare and present their cases carefully and diligently. For this reason, our Regulations specifically require all parties to set forth certain details in each protest filing, including "all information establishing the timeliness of the protest." Section 21.1(c)(6), 60 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.1(c)(6)). If, in its initial protest, a protester fails to establish the timeliness of its challenge, the protest will be dismissed, and the protester will not be permitted another opportunity--for example in a reconsideration request--to present its case. See Eurometalli s.p.a.--Recon., B-250522.2, Apr. 15, 1993, 93-1 CPD ¶ 323. Since CMS' protest on its face appeared untimely--albeit allegedly due to a mistaken communication between the protester and its counsel--it was properly dismissed.

Alternatively, CMS contends that even if we do not grant its reconsideration request, its second protest against the rejection of its bid is timely filed because it responds to a letter issued by the contracting officer on December 14, which confirmed the agency's basis for rejecting CMS' bid. CMS argues that prior to receiving this formal notification, any basis the protester had for challenging the rejection of its bid was purely speculative because it was based on oral information.

It is not clear to us that the second filing should be considered a separate protest because it merely elaborates on matters raised in the first protest that was dismissed as untimely. However, even assuming it should be so considered, as discussed above, protests must be filed within 14 calendar days from when the protester first learns its basis for protest; further--and as specifically recognized by the protester in its initial protest--a protester's receipt of oral information forming the basis for its protest is sufficient to start the time period running from which this Office calculates the timeliness of a protest filing under our Regulations. Swafford Indus., B-238055, Mar. 12, 1990, 90-1 CPD ¶ 268. Written notification is not required. Id. While the protester contends that it was unaware of the reason for the rejection of its bid until receipt of the December 14 letter, the record now establishes that the protester was on notice of the basis for the agency's action by December 5 at the latest. Specifically, the protester now acknowledges that it was informed of its competitor's agency-level protest in October; filed a rebuttal to it with the agency in November; and, in a conversation with the contracting officer on December 5, was notified that the contracting officer had decided to "allow the protest" by its competitor. Thus, we decline to consider CMS' second protest because it is untimely. See Wachdienst Rheinland--Westfalen GmbH--Recon., B-241837.2, Mar. 8, 1991, 91-1 CPD ¶ 262.

The prior dismissal is affirmed.

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