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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Untimely Protest of EPA Contract Award]

FILE: B-202328

DATE: April 8, 1981

MATTER OF: Germfree Laboratories, Inc.

DIGEST:

Protest filed with GAO more than 10 working days after protester receives notification of initial adverse action (denial of its protest filed with contracting agency) is untimely and will not be considered on its merits.

DLG06473

Germfree Laboratories, Inc. (Germfree) protests the award of a contract under solicitation No. DU-80-S010 by the Environmental Protection Agency (EPA) to The Baker Company, Inc. (Baker). For the reasons stated below, we find the protest to be untimely filed and therefore not for consideration on its merits.

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Germfree initially protested the September 30, 1980 award of the contract in an October 9, 1980 letter to the contracting officer. In its letter, Germfree protested the earlier decision of the contracting officer to reject its bid as nonresponsive because the offered item did not meet all the specifications. In a January 6, 1981 letter, the agency denied the protest. On March 2, 1981, approximately two months after denial of its protest filed with the contracting agency, we received a copy of a February 6, 1981 Germfree letter, addressed to the EPA, requesting that its "file" be "turned over" to our Office.

We believe the protest to be untimely. Section 20.2(a) of our Bid Procedures, 4 C.F.R. § 20.2(a)(1980), requires that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after notification of initial adverse agency action. Further, a request by the protester to a contracting officer to forward a protest to GAO does not constitute filing of

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a protest. Karl Doll GmbH, B-187109, August 30, 1976, 76-2 CPD 205. EPA's letter of January 6, 1981 notifying Germfree that its protest was denied constituted initial adverse agency action, and Germfree had 10 working days from its receipt of the letter to file a protest with our Office. Yet, no protest to our Office was filed within the 10 day time limit.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel