

18134

Eaton



**DECISION**

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

FILE: B-202819

DATE: May 19, 1981

MATTER OF: International Logistics Group, Ltd.

DLG06691

**DIGEST:**

1. Notice of award, possibility of which has been protested to contracting agency, constitutes initial adverse agency action, and 10-day requirement for timely protest to GAO is not affected by protester's continuing to pursue matter with contracting agency.
2. After notice of award to competitor, protester's resubmitting objections to contracting agency and requesting information as to right of appeal does not extend 10-day period for filing timely protest with GAO.

International Logistics Group, Ltd. protests the refusal of the U.S. Army Tank-Automotive Command (TACOM), Warren, Michigan, to allow it to bid on spare parts for armored cars being procured for the Kingdom of Saudi Arabia for use by its national guard.

AGC00062

The firm seeks cancellation of a contract for 579 cars, as well as weapons and component spare parts, awarded on a sole source basis to the Cadillac Gage Company. International Logistics alleges numerous violations of the Defense Acquisition Regulation (DAR) regarding foreign military sales.

DLG0456

While our Office now reviews protests concerning the propriety of awards under the Department of Defense foreign military sales program, Procurements Involving Foreign Military Sales, 58 Comp. Gen. 81 (1978), 78-2 CPD 349, they are subject to the same timeliness rules as any other protest. For the following reasons, we find that International Logistics, which initially protested to TACOM, did not comply with the timeliness provisions of our Bid Protest Procedures, 4 C.F.R. 20.2 (1980).

[Request for Contract CANCELLATION]

DLG06692

246937 115250

On September 16, 1980, International Logistics wrote TACOM, formally requesting that it be permitted to participate in the procurement under solicitation No. DAAE-7-80-R-0080. The firm sought a listing of Cadillac Gage spare parts and indicated that even if sole source procurement of the cars was justified, the two-year spare parts requirement should be broken out for competitive bidding.

On October 8, 1980, the contracting officer informed International Logistics that Saudi Arabia, in accord with DAR § 6-1307 (which permits a foreign military sales customer to request that a defense article be obtained from a particular prime source), had selected the V-150 "Commando" car produced by Cadillac Gage. He stated that the Government had no engineering data which would enable it to break out the spare parts and that the cost of reverse engineering of a vehicle that was not part of Army inventory was prohibitive. Therefore, the contracting officer concluded, the Government was not able to provide International Logistics with an opportunity to compete.

International Logistics pursued the matter by letter dated November 25, 1980, reiterating its request to bid on the spare parts and formally protesting the use of any form of catalog pricing for the procurement. The contracting officer's response, dated January 2, 1981, informed International Logistics that a contract had been awarded to Cadillac Gage the previous November 24 and that Saudi Arabia had concurred in a waiver of normally-required cost and pricing data.

In a February 13, 1981, letter to TACOM, International Logistics further protested the award and inquired as to its appeal rights. The contracting officer's response, dated March 30, 1981, indicated that since the firm had not protested to our Office following his original protest denial, he considered the decision final and any further protest untimely.

International Logistics' protest to our Office was dated April 3 and received April 9, 1981; the firm also filed a supplementary protest dated April 6, 1981. Both included

copies of correspondence with TACOM and incorporated all arguments made to that command. International Logistics seeks relief including damages of up to \$2 million and, if it is not permitted to participate in the procurement, debarment of both Cadillac Gage and its parent company, Ex-Cello Corporation, from further participation in Department of Defense procurements on grounds of "a monopolistic and unethical pattern of business behavior."

International Logistics asserts that its protest to our Office is timely, since it was filed within 10 working days of the contracting officer's letter of March 30, 1981. Prior to that time, the firm states, it had not protested, but had merely attempted to inform, persuade, and elicit from TACOM the reasons for denial of the opportunity to bid.

We disagree. Our procedures require that when a protest is initially filed with a contracting agency, any subsequent protest to this Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. Even if International Logistics' letters to TACOM of September 16 and November 25, 1980, are not considered formal protests, it is clear from the record that the firm was advised on January 2, 1981, that a contract had been awarded to Cadillac Gage Company.

Under decisions of our Office, notice of an award, the possibility of which has been protested to a contracting agency, constitutes initial adverse agency action, and the 10-day requirement for a timely protest to our Office is not affected by the protester's continuing to pursue the matter with the contracting agency. Westwood Pharmaceuticals, Inc.--Reconsideration, B-191443, May 23, 1978, 78-1 CPD 392. Thus, International Logistics' resubmitting its objections to TACOM and requesting information as to its right of appeal did not extend the 10-day period for filing with our office. See also Murphy Anderson Visual Concepts--Reconsideration, B-191850, July 31, 1978, 78-2 CPD 79. The firm's protest to our Office was not filed within 10 days of the January 2, 1981, notice of award to Cadillac Gage. We therefore will not consider the protest on its merits.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel