

118649 - *Solden*

DECISION



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

FILE: B-207505

DATE: June 11, 1982

MATTER OF: Tenavision, Inc.

DIGEST:

1. Protest to GAO filed 10 months after denial of protest to agency is untimely. Letter allegedly sent to GAO, but never received in our Office, cannot be considered "filed" for timeliness purposes. Moreover, request that agency notify GAO of protest is not considered a direct protest to our Office.
2. Protest is untimely because it was not diligently pursued where protester, after FOIA request was temporarily denied, failed to renew request for approximately 15 weeks.

Tenavision Inc. (Tenavision), protests the award of a contract to Executone under invitation for bids (IFB) No. N72474-81-C-8274, issued by the Department of the Navy (Navy). Tenavision protests that the system bid by Executone does not meet the Navy's IFB specifications and the Underwriters Laboratories (U.L.) standards.

Tenavision initially protested to the Navy on June 10, 1981. In this protest letter, Tenavision asked the Navy to notify GAO that it was formally protesting. On June 10, 1981, Tenavision also made a Freedom of Information Act (FOIA) request that the Navy provide Tenavision with Executone's submittals so that Tenavision could determine if Executone's product complied with the specifications and U.L. standards.

By letter of June 22, 1981, the Navy informed Tenavision that no award had been made. The Navy also stated it could not comply with the FOIA request at that time and further advised Tenavision that protests to GAO should be filed directly with GAO.

By letter of August 14, 1981, the Navy advised Tenavision that Executone had been awarded the contract and formally denied Tenavision's protest, stating that Executone's equipment satisfied IFB specifications and U.L. standards. On November 30, 1981, Tenavision renewed its FOIA request and on January 19, 1982, Tenavision received the information concerning Executone's equipment. On April 1, 1982, based on the information it received in response to its FOIA request, Tenavision again protested to the Navy that Executone's equipment did not meet the Navy specifications and U.L. standards. Tenavision also protested to GAO in a letter filed with GAO on May 14, 1982. In its letter, the protester states that it timely protested to the Navy and also timely protested to GAO and enclosed a copy of a letter of protest to GAO dated May 26, 1981.

First, with respect to the May 26, 1981, letter of protest to GAO, this Office has no record of receiving this letter. Moreover, we note Tenavision took no steps to ascertain the status of its protest with our Office for almost 1 year. Absent any affirmative evidence to the contrary, the protest to GAO, therefore, must be considered to have been filed on May 14, 1982. See Environtronics, B-202094.2, June 10, 1981, 81-1 CPD 477; Bill Hickman, General Contractor, Inc., B-203195, May 26, 1981, 81-1 CPD 412. Accordingly, the protest is clearly untimely filed. 4 C.F.R. § 21(b)(2) (1981).

We also point out that Tenavision was advised on June 22, 1981, by the Navy, that a protest to GAO must be filed directly with GAO and the Navy would not advise GAO of the protest. The agency's timely receipt of a copy of a protest to GAO does not satisfy the requirement to file a timely protest with this Office. Bill Hickman, General Contractor, Inc., supra.

On August 14, 1981, the Navy advised Tenavision of the award to Executone and also denied Tenavision's protest, which denial constituted the initial adverse agency action. Although Tenavision could have timely protested to GAO within 10 days of the initial adverse agency action (4 C.F.R. § 21.2(a)), Tenavision apparently took no action for approximately 15 weeks, until November 30, 1981, when Tenavision, by letter to the Navy, renewed its FOIA request. In our view, Tenavision failed to diligently pursue its protest by not seeking within a reasonable period of time the information which eventually revealed the information underlying its protest. We have held that a protester's

failure to diligently pursue the matter by seeking within a reasonable time the information which reveals the basis for protest requires rejection of the protest as untimely. See National Systems Management Corporation, B-198811, October 10, 1980, 80-2 CPD 268, affirmed B-198811, November 19, 1980, 80-2 CPD 380; National Council of Senior Citizens, Inc., B-196723, February 1, 1980, 80-1 CPD 87.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel