

Robert 119467

DECISION



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

FILE: B-208853 **DATE:** September 21, 1982
MATTER OF: Ray Allen Manufacturing Co. Inc.

DIGEST:

1. Protest to GAO that is time/date stamped as received more than 10 working days after protester had knowledge of adverse agency action, on protest filed with agency is untimely and will not be considered.

2. Protester's submission of copy of an earlier protest letter to GAO for which GAO has no record of receipt is not adequate proof of the timely receipt of the protest.

Ray Allen Manufacturing Co. Inc. protests the sole source award of a contract for dog collars to Los-Sana Argus LTD under solicitation No. DLA700-82-R-0029 issued by the Defense Logistics Agency (DLA). We will not consider the merits of this protest because it is untimely filed.

By letter of April 14, 1982, Ray Allen lodged a protest with DLA contesting the sole source award to Las-Sana. DLA responded adversely to the protest in a July 19 letter to Ray Ailen which reaffirmed the agency's position that Las-Sana is the sole source for the dog collars required under the solicitation. On August 31 we received a letter from Ray Allen forwarding a copy of a July 26 letter purporting to be a protest Ray Allen had filed with us previously. We have no record of receiving the July 26 letter.

Our Bid Protest Procedures require that when a protest is first filed with an agency, a subsequent protest be filed "within 10 [working] days of formal notification of or actual or constructive knowledge of initial adverse agency action," 4 C.F.R. § 21.2(a) (1982). Filed is defined as "receipt in the General

Accounting Office", 4 C.F.R. § 21.2(b)(3). Since Ray Allen's protest, received in our Office on August 31 as evidenced by our Office time/date stamp, was not filed within 10 days of Ray Allen's knowledge of DLA's adverse action on the agency protest, it is untimely and will not be considered on the merits.

The time/date stamp is accepted as evidence of the time of receipt of a bid protest at GAO absent affirmative evidence to the contrary to show actual earlier receipt. Linguistic Systems, Incorporated, 58 Comp. Gen. 403 (1979), 79-1 CPD 250. Ray Allen's submission of a copy of its July 26 letter of protest to GAO for which we have no record of receipt is not adequate proof of the timely receipt of the protest. In this regard, bidders are cautioned at 4 C.F.R. § 21.2(b)(3) of our Procedures that protests should be transmitted to our Office in a manner which will assure their earliest receipt and that an untimely protest will not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the expiration of the time for filing a protest. In these circumstances, the risk of loss of a protest letter is borne by the protester. Thus, there is no basis for our Office to consider the protest. See Hawaii C.A.P. Directors Association, Inc.--Reconsideration, B-204427.2, February 8, 1982, 82-1 CPD 107.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel