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**DECISION**



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

**FILE:** B-216294

**DATE:** September 13, 1984

**MATTER OF:** Seabrokers, Inc.

**DIGEST:**

1. Protest filed more than 10 working days after protester learned of adverse action on protest filed with agency is untimely, notwithstanding that protester allegedly mailed earlier timely protest letter which GAO never received.
2. Agency's advice to company which had filed protest with agency to protest to GAO instead constitutes adverse agency action on that protest under GAO Bid Protest Procedures.

Seabrokers, Inc. protests the rejection of its proposal as late by the Defense Logistics Agency under request for proposals No. DLA600-84-R-0152. We will not consider the protest because it is untimely.

Our Bid Protest Procedures require that a protest such as this be filed within 10 working days of when the protester knows or should know of the basis for protest. 4 C.F.R. § 21.2(b)(2) (1984). The Procedures further provide that if the protest is filed initially with the contracting agency any subsequent protest to this Office must be filed within 10 working days of when the protester knows of adverse agency action on the protest filed with it. 4 C.F.R. § 21.2(a). Seabrokers' protest does not meet the requirement of this latter provision.

The Seabrokers' protest letter to this Office, dated August 30, 1984, was received on September 5. Seabrokers stated in that letter that it had previously sent a protest letter to us and it enclosed a copy of a letter dated August 13 which is addressed to us, and which does protest the rejection of its proposal. That August 13 letter states that Seabrokers had protested to DLA but that DLA advised it to protest here.

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It is the responsibility of a protester to file a protest within the time limits provided. "Filed" is defined as receipt. 4 C.F.R. § 21.2(b)(3). This Office has no record of receiving the August 13 letter; thus, we must consider September 5 as the filing date of Seabrokers' protest here. That date, however, is more than 10 working days after the protester was told to file its protest here, which advice, in our view, clearly constituted adverse action by DLA on the protest filed with it. Therefore, we view the protest as untimely and we decline to consider it. See, e.g., Mark Dunning Industries, Inc., B-208150.2, Dec. 27, 1982, 82-2 CPD ¶ 577, where we also declined to consider the protest under similar circumstances.

The protest is dismissed.

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