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DECISION



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

FILE: B-219607.2 **DATE:** August 23, 1985
MATTER OF: Humanoid Systems--Request for
Reconsideration

DIGEST:

Initial decision dismissing protest as untimely is affirmed where protest was not filed with GAO within 10 days after protester knew the basis for protest.

Humanoid Systems (Humanoid) requests reconsideration of our July 23, 1985, notice dismissing as untimely Humanoid's protest concerning request for proposals (RFP) No. F33165-85-R-0535, issued by the Department of the Air Force. We affirm the dismissal.

By letter received in our Office on July 23, Humanoid protested that the Air Force improperly rejected as late the proposal Humanoid submitted in response to the RFP. Humanoid's submission indicated that on May 28 Humanoid had complained to the Air Force concerning the rejection of its proposal, and that on May 31 Humanoid had received the agency's response rejecting its complaint. We construed Humanoid's complaint to the agency as a protest and the agency's reply--that it considered Humanoid's proposal late and thus unacceptable--as adverse agency action.

Under section 21.2(a)(3) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985), if a protest initially is filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the protester had actual or constructive knowledge of adverse agency action. We dismissed Humanoid's protest as untimely because we did not receive it until July 23, more than 10 days after Humanoid had received the Air Force's letter rejecting the firm's protest.

In its request for reconsideration, Humanoid asserts that the May 28 complaint never was intended as a protest to the Air Force. Humanoid maintains that its knowledge of the Air Force's position should not be measured from May 31, since the Air Force agreed to reconsider the matter after

that date. Humanoid argues that it did not know the Air Force's final position until it received a July 9 letter stating that Humanoid's proposal would not be considered.

Even if Humanoid's earlier complaint to the agency is not viewed as a protest, Humanoid's protest to our Office still is untimely. Under section 21.2(a)(2) of our Regulations, an initial protest filed with our Office, to be timely, must be filed within 10 working days after the protester knows or should know its protest basis. Humanoid knew from the May 31 response to its complaint that the Air Force considered its proposal late and thus unacceptable, and the firm's continued pursuit of the matter with the Air Force after that date did not extend the time for protesting to our Office. BHT Thinning, B-217105, Jan. 16, 1985, 85-1 C.P.D. ¶ 44. Humanoid's July 23 protest thus is untimely under section 21.2(a)(2).

Our decision is affirmed.

for Seymour Egan
Harry R. Van Cleve
General Counsel