

Ayer

DECISION



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

FILE: B-220041.2 **DATE:** October 8, 1985
MATTER OF: Sermor, Inc.--Reconsideration

DIGEST:

Determination to dismiss protest, without obtaining agency report, under 4 C.F.R. § 21.3(f) is affirmed on reconsideration where protester fails to establish that determination was based on either errors of fact or of law.

Sermor, Inc., a small business, requests reconsideration of our September 9, 1985, dismissal of its September 5, 1985, protest. Sermor protested award to any other firm, claiming that it was entitled to the award as the low responsive, responsible bidder. We dismissed the protest, under section 21.3(f) of our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), after learning from the Air Force that the question of Sermor's responsibility had been referred to the Small Business Administration (SBA) and that SBA had declined to issue a certificate of competency (COC) to Sermor.

On reconsideration, Sermor contends: (1) GAO improperly relied on oral advice from the Air Force as a reason for dismissing Sermor's protest without affording Sermor an opportunity to comment; (2) SBA acted fraudulently, or in bad faith, in its review of Sermor's application for a COC; and (3) the Air Force and the Defense Contract Administration Services Management Area/Orlando (DCASMA) are improperly determining that Sermor is not responsible.

In order to prevail in its request for reconsideration, Sermor must show either errors of fact or of law in our prior decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1985); O. V. Campbell & Sons Industries, Inc.--Reconsideration, B-218661.2, May 6, 1985, 85-1 C.P.D. ¶ 506. On reconsideration, we find that Sermor has not met this burden and, therefore, affirm our prior decision dismissing its protest.

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Sermor filed a similar protest against an Army procurement which was the subject of our decision in Sermor, Inc., B-219173, July 17, 1985, 85-2 C.P.D. ¶ 56. On August 7, 1985, Sermor filed a request for reconsideration of B-219173. The basis for the request for reconsideration of B-219173 is substantially the same as Sermor's instant request for reconsideration.

In both requests for reconsideration Sermor objects to GAO's dismissal of its protests on the basis of oral information provided by the contracting agency. Section 21.3(f) of our Bid Protest Regulations provides, in part, that:

". . . When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the General Accounting Office, it will dismiss the protest at that time." 4 C.F.R. § 21.3(f) (1985).

In such circumstances, contracting agencies are not required to file an agency report and interested parties are not afforded an opportunity to file written comments.

Also, in both requests for reconsideration, Sermor alleges the same basis for fraud and bad faith by SBA. So far as the instant protest is concerned, we find the issue untimely. We understand that SBA denied a COC regarding the instant procurement on May 15, 1985. We assume that Sermor received this determination not later than 1 calendar week after issuance. See Unico, Inc., B-218065.2, Mar. 11, 1985, 85-1 C.P.D. ¶ 297. Our Bid Protest Regulations require protests to be filed within 10 working days after the protester knew or should have known the basis for the protest. 4 C.F.R. § 21.2(a)(2) (1985). Since Sermor should have known of SBA's rejection of its application for a COC by May 23, 1985, and it was able to fully articulate its allegation of fraud or bad faith on August 7, 1985, when it filed for reconsideration of B-219173, we find the issue would have been untimely even if it had been raised in Sermor's September 5, 1985, protest of this procurement. The issue therefore is untimely and will not be considered on its merits. Memorex Media Products Group, B-219810, Aug. 12, 1985, 85-2 C.P.D. ¶ 161.

Finally, Sermor seeks to elaborate, on reconsideration of its initial September 5, 1985, contention that:

"The PCOs are holding negative government action against Sermor when the FAR's state that the contractor cannot be held liable/responsible for acts of the government in their contractual capacity."

Our Bid Protest Regulations require that a protest contain a detailed statement of the legal and factual grounds for protest and copies of any relevant documents. 4 C.F.R. § 21.1(c)(4) (1985). In our view, the above statement is an insufficient statement of a ground of protest. Since we would not consider this allegation as initially presented, United Telecontrol Electronics, Inc., B-219024, July 1, 1985, 85-2 C.P.D. ¶ 8, we will not consider it on reconsideration. This deficiency is not cured by Sermor's attempt to reserve the right to supplement its initial filing by denoting it:

". . . a preliminary notice of . . . protest.
Expanded protest grounds will be forwarded by
separate letter . . ."

We have held such piecemeal filing improper and not for our consideration. Mid-Continent Adjustment Company, B-219397, Sept. 11, 1985, 85-2 C.P.D. ¶ ____.

Accordingly, Sermor has failed to provide a basis upon which to modify our dismissal of its protest and that determination therefore is affirmed.

for 
Harry R. Van Cleve
General Counsel