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DECISION



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

FILE: B-221177.2 **DATE:** December 13, 1985

MATTER OF: Discount Machinery & Equipment, Inc.--
Request for Reconsideration

DIGEST:

1. Where a protest to GAO following initial adverse agency action is not received within 10 working days of that action because it was misaddressed to the procuring activity rather than to GAO, the protest was properly dismissed as untimely.
2. GAO's Bid Protest Regulations provide clear instructions for the proper preparation and submission of protests, and all protesters are on constructive notice of their contents since those regulations were published in the Federal Register and appear in the Code of Federal Regulations.

Discount Machinery & Equipment, Inc. requests reconsideration of our November 26, 1985, dismissal of the firm's protest against the award of a contract to another firm under a solicitation issued by the Army Materiel Command. We affirm the dismissal.

Discount Machinery had filed a protest with the Army after the firm learned of the award. By letter dated October 29, the Army responded to the issues raise by Discount Machinery and formally denied the protest. Upon receipt of the Army's denial, the firm then sought to file a protest with this Office. However, this submission, dated November 4, was misaddressed to the procuring activity, and, consequently, we did not receive it until November 25, after the procuring activity had forwarded it to us. Accordingly, we dismissed the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which specifically provide that if a protest has been filed initially with the contracting agency, any subsequent protest to this Office, in order to be timely, must be filed (received) within 10 working days of actual

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or constructive knowledge of initial adverse agency action on the agency-level protest. Adverse agency action necessarily includes a decision on the merits of the agency-level protest. 4 C.F.R. § 21.0(e). Therefore, because Discount Machinery's subsequent protest to this Office was not received until well beyond 10 working days after the firm received the Army's decision of October 29, we dismissed the protest as untimely.

It is clear from Discount Machinery's request for reconsideration that the firm misunderstands the requirements for the timely filing of protests imposed by our regulations, and nothing in the request meets the firm's burden to show that our prior dismissal was legally or factually erroneous. See Department of Labor--Reconsideration, B-214564.2, Jan. 3, 1985, 85-1 CPD ¶ 13.

Contrary to Discount Machinery's apparent belief, we did not dismiss the protest because it was not filed within 10 working days of the actual contract award. See 4 C.F.R. § 21.2(a)(2). Rather, the firm's November 4 protest submission was dismissed because, due to its being misaddressed to the procuring activity, it was not received by us until the 10-day period specified in our regulations for the timely filing of protests following initial adverse agency action had expired. 4 C.F.R. § 21.2(a)(3).

Our regulations provide clear instructions for the preparation and submission of protests to this Office, including our proper address. 4 C.F.R. § 21.1(b). Accordingly, misaddressing a protest does not excuse its untimely receipt. ISS Energy Services, Inc.--Reconsideration, B-216030.2, Jan. 7, 1985, 85-1 ¶ 23. To the extent Discount Machinery may have been unaware of our regulations, all protesters are on constructive notice of their contents since our regulations were published in the Federal Register and appear in the Code of Federal Regulations. Engineers International, Inc.--Reconsideration, B-219760.2, Aug. 23, 1985, 85-2 CPD ¶ 225.

The dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel