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DECISION



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

FILE: B-221726.2 **DATE:** March 7, 1986

MATTER OF: Sweepster Jenkins Equipment Co.,
Inc.--Request for Reconsideration

DIGEST:

Prior dismissal is affirmed where protester did not offer any new evidence and waiver of our timeliness rule for good cause is not warranted.

Sweepster Jenkins Equipment Co., Inc. (Sweepster), requests reconsideration of our January 24, 1986, dismissal of its protest against the award of a contract to Danline Maskiner of Denmark (Danline) by the United States Air Force (Air Force), under request for proposals (RFP) No. F61546-85-R-0384. We dismissed the protest as untimely under 4 C.F.R. § 21.2(a)(3) (1985).

We affirm our prior dismissal.

Award was made to Danline on November 27, 1985, and Sweepster was advised of the award on December 27, 1985. Sweepster complained of the award to the Air Force, contending that there may have been price leaks. By telex of December 31, 1985, the Air Force advised that there were no improprieties in the award and, in effect, denied Sweepster's protest. Sweepster filed its protest in our Office on January 24, 1985, by letter dated January 15, 1985. Under 4 C.F.R. § 21.2(a)(3), if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action to be considered. The fact that Sweepster's protest was filed more than 10 working days after the December 31 telex warranted dismissal of the protest.

In its request for reconsideration, Sweepster argues that it filed its protest on January 15 when it became aware that the Air Force could not satisfactorily resolve its questions. Also, citing Federal Acquisition Regulation (FAR), § 33.104(c)(5) (Federal Acquisition Circular 84-9, June 20, 1985), pertaining to an agency's suspending

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contract performance when a protest is received within 10 days of award, Sweepster argues that while performance need not be suspended here, the protest still should be considered. Further, Sweepster believes that even though the protest technically is late, the fact that the Air Force facility is in West Germany and Sweepster is in Michigan justifies consideration of the protest.

We disagree. Our regulations specify that the filing necessary to toll our timeliness rules means receipt of the protest submission in our Office. 4 C.F.R. § 21.2(b). Thus, we find that Sweepster's protest was filed in our Office on January 24, notwithstanding that it presumably mailed the protest on January 15. Moreover, the 10-day postaward time period set forth in FAR, § 33.104(c)(5), is unrelated to the separate timeliness rules in 4 C.F.R. part 21.

In order to prevent our timeliness rules from becoming meaningless, we limit exceptions to the requirements where good cause for the late filing is shown or where the protest raises issues significant to the procurement community. See 4 C.F.R. § 21.2(c). The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the firm from filing a timely protest. The fact that the procuring activity is located in West Germany did not prevent Sweepster, located in the United States, from filing a timely protest with our Office.

Our dismissal is affirmed.

for Seymour E. Efron
Harry R. Van Cleve
General Counsel