



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Surface Combustion, Inc.--Request for
Reconsideration
File: B-230112.2
Date: March 3, 1988

DIGEST

A protest to the General Accounting Office (GAO) that was not filed within 10 working days of actual knowledge of the initial adverse agency action is untimely. Earlier receipt by GAO of an information copy of letter which was addressed to the contracting officer and did not include a clear indication of a desire for a decision by GAO does not constitute a protest to GAO.

DECISION

Surface Combustion, Inc. requests that we reconsider our dismissal of its protest concerning an allegedly improper award of a contract under solicitation No. DAAA-22-86-R-9011, issued by the Department of the Army. We dismissed the protest because it was filed more than 10 working days after the protester had knowledge of the denial of its agency level protest.

Surface Combustion argues that because it mailed its protest to our Office just 2 days after the 10-day filing deadline had passed, we should entertain the protest.

We deny the request for reconsideration.

On November 17, 1987, Surface Combustion filed a protest with the Army claiming that the Army had improperly awarded a contract to another offeror. The Army denied Surface Combustion's protest on December 18, but Surface Combustion claims it did not receive that denial until January 4, 1988 when it reopened after a holiday recess. In response to the Army's denial of its protest, Surface Combustion by letter dated January 18 submitted additional arguments and once again requested the Army to set aside the existing award and instead award a contract to it.

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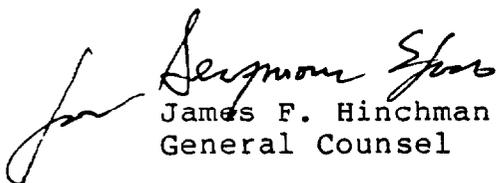
Our Office received an information copy of this correspondence on January 20. At that time we notified Surface Combustion that its subsequent agency level protest to the Army did not constitute a formal protest to our Office. See Tate Engineering, Inc., B-227600, July 28, 1987, 87-2 CPD ¶ 104.

Despite our notice, Surface Combustion apparently believes that it filed a protest with our Office concerning the Army's denial of its agency level protest when it sent us a copy of the January 18 letter addressed to the Army. We disagree. Since the January 18 letter was not addressed to our Office and did not include a clear indication that Surface Combustion desired a decision by our Office, that letter did not constitute a protest to us. Bid Protest Regulations 4 C.F.R. § 21.1(c) (1987); see Tri-Count Corrugated, Inc., 65 Comp. Gen. 200 (1986), 86-1 CPD ¶ 34.

It was not until January 28 that we received a formal protest, indicating Surface Combustion's belief that the matter was before us for decision. Since this protest was not filed with our Office within 10 working days after the protester's receipt of actual notice of the initial adverse agency action (January 4), it was untimely. 4 C.F.R. § 21.2(a)(3).

While Surface Combustion seems to argue that it was untimely because of a holiday shutdown at its plant, we will not waive our timeliness requirements since such a holiday shutdown does not constitute a compelling reason beyond the protester's control that prevented it from filing a timely protest with this Office. See ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 CPD ¶ 215.

The request for reconsideration is denied.


James F. Hinchman
General Counsel