



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MMC/PHT--Request for Reconsideration

File: B-230715.2

Date: April 5, 1988

DIGEST

Dismissal of protest as untimely is affirmed where protester failed to file its protest with the General Accounting Office (GAO) within 10 working days of notice of initial adverse agency action on protester's initial protest to the procuring agency.

DECISION

MMC/PHT requests reconsideration of our dismissal of its protest against the Navy's award of a contract under solicitation No. N00163-87-R-1484 to Riverport Industries, Inc. We dismissed the protest because we found that it was untimely filed. We affirm our prior dismissal.

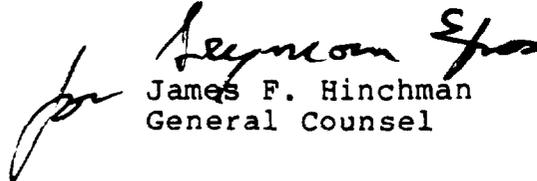
MMC/PHT initially filed an agency-level protest with the Naval Avionics Center (NAC), Department of the Navy. By letter of December 28, 1987, NAC denied the protest. MMC/PHT received the Navy's letter denying the protest on January 4, 1988. By letter of February 17, MMC/PHT resubmitted its protest to the agency; the agency affirmed its original denial on March 1. Subsequently, on March 21, we received MMC/PHT's protest against the award to Riverport. We dismissed MMC/PHT's protest because it was not filed with our office within 10 working days after January 4, when MMC/PHT received notice of the initial adverse agency action on its agency-level protest. 4 C.F.R. § 21.2(a)(3) (1987). On reconsideration, MMC/PHT argues we should consider its protest timely because the NAC denials allegedly were not based on the pertinent issues of its original protest to NAC.

Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3), provide that where a protest has been filed initially with the contracting agency, any subsequent protest to GAO must be filed within 10 working days of notification of initial

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adverse agency action. Here, notwithstanding the protester's belief that certain pertinent issues were not considered by the agency, NAC's letter of December 28, 1987, denying MMC/PHT's initial protest constituted initial adverse agency action and MMC/PHT had 10 working days upon receipt of that letter on January 4, to file its protest here. Baltimore Electronics Associates, Inc.--Request for Reconsideration, B-227942.3, B-228753.2, Sept. 18, 1987, 87-2 CPD ¶ 278. The second protest filed with NAC on February 17, does not toll the 10 working day period for filing a protest with our Office. See Fairly Microfiltrex Division, B-227086, July 30, 1987, 87-2 CPD ¶ 117.

Our prior dismissal is affirmed.


James F. Hinchman
General Counsel