



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Elgin Sweeper Company--Reconsideration

File: B-230956.2

Date: May 4, 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 prior protest filed with the procuring agency. A protest is filed for purpose of GAO timeliness rules when it is received in GAO notwithstanding when it was mailed.

DECISION

Elgin Sweeper Company requests that we reconsider our dismissal of its protest under request for proposals No. DLA700-87-R-7581, issued by the Defense Logistics Agency (DLA). We dismissed the protest because Elgin did not file in a timely manner.

Elgin states that on March 7, 1987, it received notice of DLA's adverse action concerning its letter of protest to DLA. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1987), provide that a bid protest is untimely if it is not filed with GAO within 10 working days after the protester has actual or constructive knowledge of initial-adverse agency action. The protest was date stamped in GAO April 6, and therefore was dismissed as untimely.

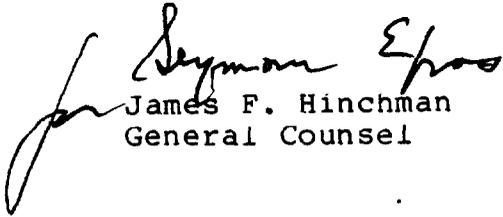
Elgin argues that its protest should be considered timely because it initially mailed a protest letter to our Office on March 14, several days before the 10 working days deadline, and mailed a second letter as soon as it learned that our Office had not received the first letter.

A protest is filed for purposes of our timeliness rules when it is received in GAO. 4 C.F.R. § 21.2(b); Kinematics/True Time--Reconsideration, B-227305.2, June 18, 1987, 87-1 CPD ¶ 612. The well-established rule is that our Office's time/date stamp establishes the time we received the protest materials absent other evidence to show actual earlier

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receipt. Atlantic Management Center--Reconsideration, B-228068.3, Sept. 30, 1987, 87-2 CPD ¶ 316. Thus, for timeliness purposes, it is irrelevant that the protester mailed its protest within 10 working days of initial notice of adverse agency action. Baltimore Electronics Associates, Inc.--Request for Reconsideration, B-227942.3, B-228753.2, Sept. 18, 1987, 87-2 CPD ¶ 278.

We properly dismissed Elgin's protest because it was not received in this Office until April 6, more than 10 working days after Elgin received notice of initial-adverse agency action on its prior protest to DLA. Our prior dismissal is affirmed.


James F. Hinchman
General Counsel