



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Blood--Request for Reconsideration
File: B-232541.2
Date: September 23, 1988

DIGEST

Dismissal of protest as untimely is affirmed where on reconsideration additional information provided by protester does not establish that his protest at the General Accounting Office was filed within 10 working days of initial adverse action on his prior agency-level protest.

DECISION

John Blood has requested that we reconsider our dismissal, as untimely, of his protest of a purchase order issued to another contractor for tree thinning in the Uncompahgre National Forest, Colorado. For the reasons stated below, our dismissal is affirmed.

On September 8, 1988, Mr. Blood filed with us a protest in which he objected to the issuance of the purchase order to another contractor. We dismissed the protest by notice dated September 9, on the basis that where a protest initially has been filed with a contracting agency, any subsequent protest to our Office must be filed with us within 10 working days after the protester has actual or constructive notice of agency action adverse to his protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988). The information then available to us indicated Mr. Blood did not meet this requirement.

On reconsideration, Mr. Blood argues that he did timely object to this award in that he filed with the Forest Service's contracting officer a protest "two days after I was aware of adverse agency action." In support of his assertion, Mr. Blood has provided photocopies of the award document dated July 12, his agency-level protest dated July 17, and the contracting officer's denial dated August 8. It does appear from these documents that in a telephone conversation on Friday, July 15, the contracting

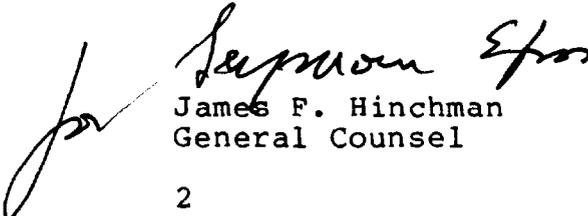
officer advised Mr. Blood of the award to another contractor and that on Monday, July 18, Mr. Blood posted a written protest to the contracting officer. In his later denial of the protest the contracting officer himself refers to receiving Mr. Blood's protest "on about July 18th."

It would appear, therefore, that Mr. Blood did promptly and timely file a written protest with the Forest Service's contracting officer. That, however, is not the issue in this case. Our concern is whether Mr. Blood filed his subsequent protest with our Office in a timely manner once his protest had been denied by the contracting officer. In this connection, it appears that Mr. Blood may have misunderstood the term "adverse agency action" as used in our Bid Protest Regulations. "Adverse agency action" is not the event which gives rise to a protest, as Mr. Blood apparently believes. It is, as we point out in our Bid Protest Regulations:

". . . any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency [and] may include . . . a decision on the merits of a protest. . . ."

4 C.F.R. § 21.0(f). As we indicated above, once an agency takes action adverse to a protest filed with it, the protester has a limited period of time--10 working days--from when he is charged with knowledge of that action to file any subsequent protest with our Office. 4 C.F.R. § 21.2(a)(3). We impose such a time limit so that matters we are asked to decide have not become stale.

Here, the correspondence provided by Mr. Blood shows that his protest was denied by the contracting officer in a letter dated August 8. If we regard that letter as the "adverse agency action" taken in response to Mr. Blood's protest, he would have 10 working days from receipt of it within which to file his subsequent protest with our Office. We did not receive Mr. Blood's protest, however, until September 8, a month after the contracting officer's denial. Even allowing a full week for the transmission of the contracting officer's letter, it appears Mr. Blood's protest to us was filed well beyond the 10-day period permitted by our Regulations. We therefore affirm our prior dismissal.


James F. Hinchman
General Counsel