



**The Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Management and Technical Support Services,  
Inc.--Reconsideration

**File:** B-232577.2

**Date:** March 9, 1989

**DIGEST**

Dismissal of protest for failure to file a copy with the contracting officer within 1 day after filing with the General Accounting Office (GAO) is reversed where record indicates that because of overseas location of contracting activity it was physically impossible to promptly effect delivery even by air courier service and the protester made a good faith effort to comply with prompt filing requirement by sending a telex and a copy of the protest by registered mail, return receipt requested, to the contracting officer on the same day that it filed its protest with GAO.

**DECISION**

Management and Technical Support Services, Inc. (MTSS), requests reconsideration of our dismissal of its protest concerning the award of a contract to another offeror under solicitation No. S-388-FA-778-A issued by the Department of State for security guard services at the United States Embassy at Kinshasa, Zaire. We dismissed the protest because MTSS failed to promptly furnish a copy of the protest to the contracting activity. We reverse the dismissal and open the file for development on the merits (B-232577.3).

Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(d) and (f) (1988), allow our Office to dismiss a protest if the protester fails to furnish a copy of the protest to the

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contracting agency within 1 working day<sup>1/</sup> after the protest is filed with us. MTSS filed its protest with our Office on September 12, 1988. The Department of State subsequently informed us that the contracting officer did not receive a complete copy of the protest until September 19, and that this copy was not provided by MTSS but by the Department's Bureau of African Affairs, which provided the letter to the contracting officer at the embassy in Zaire. Because MTSS failed to meet the 1-day notice requirement in 4 C.F.R. § 21.1(d), we dismissed the protest.

On reconsideration, MTSS argues that its protest should not have been dismissed for failure to satisfy the 1-day notice requirement because the location of the contracting activity in Zaire made the 1-day delivery even by air courier service impossible.<sup>2/</sup> Further, MTSS argues that it was aware of our prompt filing requirement and therefore investigated several options in its attempt to timely furnish a copy of the protest to the embassy in Zaire. It ascertained that it could not send information via facsimile machine since the embassy did not have such a machine. It also requested and was denied by the Department of State in Washington, D.C., permission to forward the protest by diplomatic pouch.

Under these circumstances, MTSS took the only steps that seemed reasonable to it. First, it sent a telex to the embassy in Zaire on the same day that it filed its protest, in which it essentially advised the embassy of the protest and the basis therefor. Second, it sent the contracting officer a copy of the protest by registered mail, return

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<sup>1/</sup> The basis for the 1-day notice requirement in our regulations is found in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553 (Supp. IV 1986), which requires the contracting agency to file a written report with our Office within 25 working days after we notify the agency of the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hampers the agency's ability to meet the 25-day statutory deadline, but also frustrates our efforts to consider all objections to agency procurement actions in as timely a fashion as possible. See Refac Electronics Corp.--Reconsideration, B-226034.2, Feb. 4, 1987, 87-1 CPD ¶ 117.

<sup>2/</sup> The information available to us indicates that it requires a minimum of 4 working days after the drop-off date for a letter to arrive in Zaire if delivered by a air courier service.

receipt requested. The return receipt indicated that delivery was made on September 30. Furthermore, documentation from MTSS indicates that it was in telephonic communication with the U.S. Embassy in Zaire during this time.

Our Office has dismissed protests even where notification to a contracting officer required some additional effort on the protester's part because we believe it is the protester's responsibility to take potential mailing difficulties into account when filing a protest involving an overseas procurement. Development Management Systems, Inc.--Reconsideration, B-227823.2 et al., July 24, 1987, 87-2 CPD ¶ 88 (Liberia); Sea Containers America, Inc.--Reconsideration, B-227061.3, Jan. 28, 1988, 88-1 CPD ¶ 84 (West Germany). We also have previously held that simply mailing a copy of the protest within the necessary time period is not relevant since the regulations require receipt of the protest within 1 working day of filing. Sea Containers America, Inc.--Reconsideration, B-227061.3, supra.

Under our Regulations, however, dismissal by our Office for failure to file a copy of the protest with designated agency personnel is discretionary, not mandatory. While we see no basis to routinely waive the notice requirement, we have made exceptions to the 1-day notification requirement in appropriate circumstances.<sup>3/</sup> On reconsideration, we believe the facts of the current case warrant such an exception. Here, it was physically impossible for MTSS to deliver a copy of its protest to the embassy in Zaire within 1 day. This physical impossibility distinguishes the current situation from Sea Containers America Inc., B-227061.3, supra, since air courier service to West Germany usually does not require 4 days, and the protester here, unlike the protester in Sea Containers America Inc., had no alternative delivery arrangement available through an overseas corporate affiliate. Also, the protester here, in contrast to the protester in Development Management Systems Inc., B-227823.2, supra, made a conscientious, contemporaneous effort to comply with the notification requirements. The

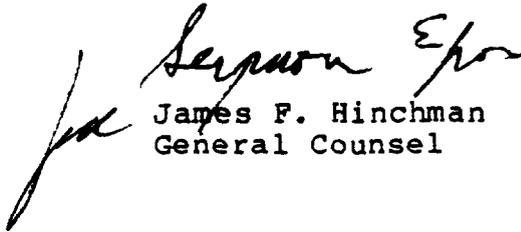
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<sup>3/</sup> Previous cases where we have considered the merits of a protest even though the protester failed to file on time with the agency involved situations where the appropriate agency people already were on notice of the protest and thus, the purposes of CICA and our Regulations were effected. Hewitt, Inc., B-219001, Aug. 20, 1985, 85-2 CPD ¶ 200; Florida Precision Systems, Inc.--Request for Reconsideration, B-219448.2, Aug. 12, 1985, 85-2 CPD ¶ 160.

embassy was informed of the protest by telex the same day the protest was filed at our Office. Although this telex was an abbreviated copy of the protest and did not detail the specific grounds of the protest, MTSS was in telephonic communication with the embassy at this time. Additionally, the embassy did receive a complete copy of the protest through its own Bureau of African Affairs on September 19 and a copy from the protester on September 30. It therefore appears that preparation of the agency report could have been commenced within 1 week of filing at our Office.

Therefore, while the contracting officer did not receive a copy of the protest from the protester as prescribed by the applicable regulations, the dismissal of the protest under 4 C.F.R. §§ 21.3(d) and (f) is reversed and the merits of the protest will be considered.

Our dismissal of MTSS's protest is reversed.

The signature is written in cursive and appears to read 'James F. Hinchman'. To the left of the signature, there are some initials, possibly 'JFH', written in a similar cursive style.

James F. Hinchman  
General Counsel