

Jordan



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Electrophysics Corporation

File: B-240545

Date: August 10, 1990

Frank J. Vallese, Sc.D., for the protester.
Vera Meza, Esq., Department of the Army, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Timely filing of bid protest with General Services Administration Board of Contract Appeals (GSBCA), which protest was subsequently dismissed by the GSBCA, does not toll the requirement that a bid protest be timely filed with the General Accounting Office. Protest filed more than 10 days after basis of protest was known is untimely.

DECISION

Electrophysics Corporation protests the issuance of purchase order No. DAAC09-90-F-1108, by the Sacramento Army Depot to B.E. Meyers & Company, Inc., under its General Services Administration (GSA) Federal Supply Schedule contract, for a quantity of night vision devices. Electrophysics contends that the devices to be purchased will not meet the performance requirements for which the devices are intended.

We dismiss the protest.

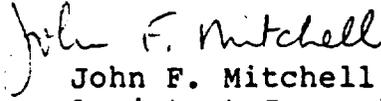
On or before July 3, 1990, Electrophysics learned of the issuance of the purchase order and protested to the GSA Board of Contract Appeals (GSBCA) through the GSA Regional Office in San Francisco. On July 5, the Army received a copy of the protest. On July 11 and 13, the Army engaged in discussions with Electrophysics in an attempt to resolve its GSBCA protest. On July 18, Electrophysics' protest was assigned a GSBCA docket number and on July 24, a prehearing conference was conducted with the parties. Since the procurement at issue did not involve automatic data processing equipment, the GSBCA dismissed Electrophysics' protest. Electrophysics then filed the same protest with our Office on July 24.

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Our Bid Protest Regulations provide that a protest must be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990). Electrophysics was aware of its protest no later than July 3, and was required to file within 10 working days after July 3, or by the close of business on July 18. Since its protest was not filed until July 24, it is untimely.

Electrophysics' timely filing with the GSBICA does not change our conclusion, since such a filing does not toll the running of our filing requirements. See System Automation Corp., B-224166, Oct. 29, 1986, 86-2 CPD ¶ 493; Coastal Indus., Inc.--Recon., B-223158.2, June 30, 1986, 86-2 CPD ¶ 20. Further, the agency's attempts to resolve Electrophysics' concerns expressed in the protest it had filed with the GSBICA, prior to the dismissal by GSBICA, did not transform the protest into a timely agency level protest.

Accordingly, the protest is dismissed.


John F. Mitchell
Assistant General Counsel