



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cajar Defense Support Company--
Reconsideration

File: B-239858.2

Date: August 16, 1990

Mason Ford for the protester.
Behn Miller and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Prior decision is affirmed where protester does not show,
that initial decision dismissing protest as untimely was in
error.

DECISION

Cajar Defense Support Company (CDSC) requests reconsideration of our decision, Cajar Defense Support Co., B-239858, June 7, 1990, 90-1 CPD ¶ 539, in which we dismissed CDSC's protest as untimely.

We affirm the prior decision.

On June 23, 1989, CDSC submitted an offer under request for proposals (RFP) No. DAAA21-89-BAA5, issued by the Department of the Army for a "Non-Conventional Kill/Incapacitation Mechanism." By letter dated April 27, 1990, the Army informed CDSC that "the technical merit of [its] proposal does not merit funding and will not be considered for award." CDSC filed a protest challenging the Army's decision by letter dated May 16, which was received in our Office on May 25. Because CDSC failed to file the protest within 10 working days after the basis of protest was known, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), we dismissed CDSC's protest as untimely.

On reconsideration, CDSC claims that its protest was in fact timely filed because before submitting its May 16 letter, CDSC had sent our Office a copy of a letter it had addressed to the federal district courts in Morristown and

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Newark, New Jersey, dated May 1, in which CDSC apparently attempted to file a complaint before the courts challenging the Army's evaluation of its proposal.

Our Regulations explicitly require protesters to set forth a detailed statement of the factual and legal grounds of protest. 4 C.F.R. § 21.1(c)(4); Cajar Defense Support Co., B-238621, Feb. 26, 1990, 90-1 CPD ¶ 235. As noted in our prior decision, the May 1 letter which CDSC refers to on reconsideration was nothing more than an information copy to our Office of a letter requesting action by the courts. Contrary to CDSC's assertions, there was no basis for construing the letter as a direct protest to our Office. CDSC addressed the letter to the courts and made the specific request "that this entire general and specific protest issue be moved into the jurisdiction of the Federal District Court." CDSC also asked the courts for "specific advice" as to how the company should "handle" its protest. Nowhere in the May 1 letter did CDSC directly request a ruling by the Comptroller General or request any specific relief from this Office. Accordingly, the May 1 letter did not constitute a valid protest to this Office. See 4 C.F.R. §§ 21.1(b)(4), 21.1(b)(5); Cajar Defense Support Co., B-238622, Feb. 28, 1990, 90-1 CPD ¶ 250; American Mutual Protective Bureau et al., B-213904 et al., Aug. 8, 1984, 84-2 CPD ¶ 157.

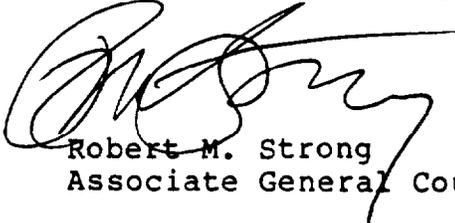
CDSC claims that we nevertheless are barred from dismissing its protest since we accepted the protest and assigned a protest file number to the case. CDSC is incorrect; there is no requirement that we decide a protest on the merits simply because we accepted the initial filing of the protest. Cajar Defense Support Co.--Recon., B-238621.2; B-238622.2, May 18, 1990, 90-1 CPD ¶ 488. To the contrary, under our Regulations, we can dismiss a protest at any time when the propriety of the dismissal becomes clear. See 4 C.F.R. § 21.3(m).

In its request for reconsideration, CDSC also alleges that our Office must have colluded with the Army to dismiss its protest; specifically, CDSC contends that the Army's use of our file number in its June 5 correspondence to our Office requesting that the protest be dismissed indicates improper communications between our staff and the Army.

As a preliminary matter, we fail to see how the Army's knowledge of the file number indicates any impropriety. In order to facilitate the process, every protest filed in our Office is assigned a file number; receipt of the protest is acknowledged and the agency is advised of the filing of the protest; and both parties are advised of the file number.

Due to the volume of correspondence our Office receives, we prefer both the protester and the contracting activity to identify all correspondence on a particular protest matter by this number, which any party may ascertain simply by calling our Office. Further, the June 5 correspondence from the Army to which CDSC refers is a request for dismissal which the Army unilaterally decided to submit to our Office. It was not received in time to have a bearing on our decision to dismiss CDSC's protest. Even if it had been received earlier, however, there is nothing improper in considering such a submission; our Regulations expressly recognize that we will dismiss a protest when the propriety of doing so only becomes clear after receipt of information from the contracting agency. 4 C.F.R. § 21.3(m).

The prior decision is affirmed.



Robert M. Strong
Associate General Counsel