

145-646



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Telestar International Corp.--Reconsideration

File: B-247029.2

Date: January 14, 1992

Frank Liu for the protester,
Richard R. Reyes, Department of the Navy, for the agency.
John Brosnan, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest filed at the General Accounting Office more than 10 days after receipt of initial decision denying agency-level protest is dismissed as untimely; protester's continued pursuant of protest with agency does not toll timeliness requirements.

DECISION

Telestar International Corporation requests reconsideration of our December 17, 1991, dismissal of its protest of the award of a contract by the Department of Navy under solicitation No. N60530-91-R-0179.

We deny the reconsideration request.

Our original decision dismissed the protest, which was filed in our Office on December 16, as untimely because it was filed more than 10 working days after the protester initially received the November 7 denial of its agency-level protest.¹ Our Bid Protest Regulations provide that where a protest is initially filed with a contracting activity any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action," which in this case was the receipt of the formal denial of the agency-level protest. 4 C.F.R. § 21.2(a)(3) (1991).

¹Where, as here, it is not clear from the record when a letter is received we assume delivery within 1-calendar week of its mailing. See Jemtec Elecs. Corp., B-244781, Aug. 2, 1991, 91-2 CPD ¶ 124. Thus, we presume that Telestar received the agency's November 7 letter on November 14.

In its reconsideration request Telestar states that it responded to the agency's November 7 denial of its protest and that the agency is still considering its response. Since the agency's November 7 denial of Telestar's agency-level protest clearly constituted the initial adverse agency action, the 10-day period began to run when Telestar received the November 7 letter. The fact that Telestar disagreed with the agency's response and attempted to have it changed before it filed its protest with our Office did not toll our timeliness requirements. Once informed of the initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. Tecniventas, S.A.--Recon., B-247323.2, Oct. 19, 1990, 90-2 CPD ¶ 320. Since Telestar did not file its protest with our Office within 10 days of its receipt of the agency denial of its protest, its protest to our Office was properly dismissed as untimely.

The reconsideration is denied.


Ronald Berger
Associate General Counsel