



Comptroller General  
of the United States

110589

Washington, D.C. 20548

# Decision

**Matter of:** Preston Dennis McGee--Reconsideration

**File:** B-253989.2

**Date:** September 8, 1993

Preston Dennis McGee for the protester.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Decision dismissing protest because of concurrent protest on same basis at General Services Board of Contract Appeals is affirmed; initial dismissal was proper, and latest filing of protest at General Accounting Office is untimely.

## DECISION

Preston Dennis McGee requests reconsideration of our decision, Preston Dennis McGee, B-253989, July 15, 1993, in which we dismissed Mr. McGee's protest because he concurrently had a protest on the same basis pending at the General Services Board of Contract Appeals (GSBCA). Mr. McGee requests that we reinstate his protest to our Office because the GSBCA has dismissed his protest in that forum.

We affirm the dismissal.

By letter dated June 22, 1993, Mr. McGee was advised that his proposal, submitted in response to the Department of the Navy's request for proposals (RFP) No. N62645-93-R-0005, had been determined to be technically unacceptable. The RFP was for the services of a computed tomography technologist, and Mr. McGee's proposal was rejected because of an unfavorable letter of recommendation from one of his previous employers. On July 2, Mr. McGee filed a protest at the GSBCA alleging that his proposal improperly had been rejected. Shortly thereafter, the GSBCA judge informally advised Mr. McGee that the Board might not have jurisdiction over the case. After this initial informal advice, the agency requested dismissal for lack of GSBCA jurisdiction. Apparently as a result of the initial informal advice and the agency's motion, Mr. McGee filed a protest in our Office on July 6, making the same allegations as those in his GSBCA protest.

After Mr. McGee filed in our Office, a number of conferences occurred in connection with the GSBCA proceeding; during these conferences, it again was suggested that Mr. McGee might wish to withdraw his GSBCA protest because there was some question regarding whether the Board had jurisdiction over the matter. Mr. McGee ultimately informed the GSBCA on July 13 that he did not wish to withdraw his protest, and would await its formal decision regarding jurisdiction. On July 15, we dismissed Mr. McGee's protest because of his outstanding GSBCA protest. Thereafter, on July 19, Mr. McGee and the Navy filed a joint motion at the GSBCA requesting that the protest there be dismissed without prejudice. The motion was granted on July 20.

Mr. McGee now requests that we reconsider our earlier dismissal of his protest. In his July 21 letter to our Office, Mr. McGee asks that we reinstate his protest because of the GSBCA's dismissal. Mr. McGee explains that he was confused by the terms of the RFP as to where to file his protest.

There is no basis to reinstate the protest. Our Bid Protest Regulations, 4 C.F.R. § 21.12 (1993), require a party seeking reconsideration to specify errors of law made or information not previously considered which would warrant reversal or modification of our initial decision. Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. Our dismissal of Mr. McGee's protest was based on the fact that, at the time he filed in our Office, the same protest grounds were pending at the GSBCA. In this regard, as indicated in our prior decision, our Regulations specifically provide for dismissal of protests pending at the Board. 4 C.F.R. § 21.3(m)(6) (1993). As Mr. McGee has not asserted or shown that his protest in fact was not pending at the Board when we dismissed his protest to our Office, the dismissal was proper.

In addition, to the extent that Mr. McGee's latest filing at our Office may be viewed as a new protest, it is untimely. Our Regulations require protesters to file in our Office no more than 10 working days after the basis of protest is known or should be known. The record shows that Mr. McGee was aware of the agency's rejection of his proposal no later than June 22. Thus, to be timely, a protest challenging the rejection had to be filed in our Office no later than July 7,<sup>1</sup> 10 working days from the date on which he became aware of his basis for protest. 4 C.F.R. § 21.2(a)(2).

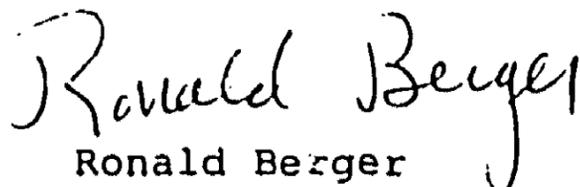
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<sup>1</sup>We point out that Mr. McGee's filing initially with the GSBCA did not suspend our timeliness requirements. Ronald King--Recon., B-251297.2, Dec. 23, 1992, 92-2 CPD 441.

Since Mr. McGee did not file in our Office until July 21, the matter is untimely and will not be considered.

Finally, the fact that Mr. McGee may have been confused regarding the appropriate forum in which to file his protest does not serve as a basis for now considering it. Protesters are charged with constructive knowledge of government regulations when they have been published in the Federal Register. Our Bid Protest Regulations are published in the Federal Register; similarly, the Federal Acquisition Regulation, which describes the jurisdictional limitations of the GSBICA, is published in the Federal Register. Mr. McGee is thus deemed to have constructive knowledge of these provisions, even if he does not have actual knowledge of them. Hilda A. Phelps--Recon., B-242329.2, Mar. 12, 1991, 91-1 CPD ¶ 273.

The dismissal is affirmed.



Ronald Berger  
Associate General Counsel