

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

Decision

Matter of: American Medequip-Reconsideration

File: B-259474.3

Date: February 2, 1995

H. Donald Thumlert for the protester.

DIGEST

Receipt of a facsimile message from the contracting activity denying an agency-level protest constitutes initial adverse agency action requiring a subsequent protest to the General Accounting Office to be filed within 10 days after receipt.

DECISION

American Medequip requests reconsideration of our decision of December 27, 1994, dismissing its protest of the award of a contract by the Department of Veterans Affairs under solicitation No. 637-1-95. We dismissed American's protest, filed on December 19, 1994, as untimely filed under our Bid Protest Regulations--requiring a protest to be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action" (emphasis added), 4 C.F.R. § 21.2(a)(3)--because the protester stated that on December 2 it received a facsimile message denying its agency-level protest. December 19 is more than 10 working days after December 2.

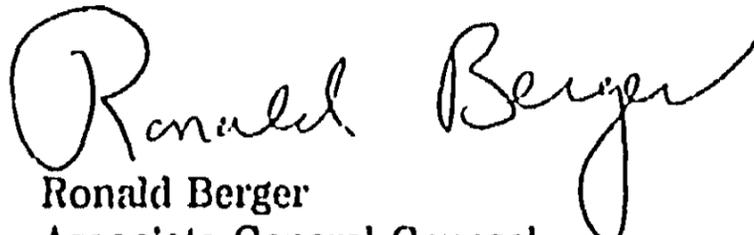
On reconsideration American states that (1) although it received a facsimile denial of its agency-level protest "late on December 2, 1994," it did not actually "see" or read the letter until December 5; (2) the facsimile was unclear; (3) American had questions about the facsimile; and (4) it was awaiting an "official" mailed copy of that denial before filing a protest with our Office. American contends that since it "never received the official hard copy," it "elected to go ahead and send an appeal notice to the [General Accounting Office] based on our best interpretation of the [facsimile] copy" and that it was "well within the 10 days required to file with the [General Accounting Office]." American contends that we erred in considering the facsimile to be official notification.

American's contention that a facsimile is not "official notification" and therefore cannot be construed as "initial adverse action" is without merit. Our cases have

American's contention that a facsimile is not "official notification" and therefore cannot be construed as "initial adverse action" is without merit. Our cases have long recognized that notice of adverse action on an agency-level protest need not come via an "official" written document. See, e.g., Pioneer Aerospace Corp., B-245911, Dec. 27, 1991, 92-1 CPD ¶ 13. In fact, written notice is not required at all--oral advice is sufficient, see Perkins-Elmer Corp., B-250869, Dec. 10, 1992, 92-2 CPD ¶ 404, as is notice of certain agency action or inaction such as the opening of bids, the award of a contract, or continued agency acquiescence in and support of substantial contract performance. 4 C.F.R. § 21.0(f). Moreover, in federal government contracting, facsimile documents are recognized as legitimate methods of communication and notice. See Computer One, Inc.--Recon., B-249352.7, Sept. 27, 1993, 93-2 CPD ¶ 185 and Instrument Assocs.--Recon., B-252884.2, Aug. 19, 1993, 93-2 CPD ¶ 105 (involving facsimile filings of bid protests and reconsideration requests); Federal Acquisition Regulation § 14.202-7 and Butt Constr. Co., Inc., B-258507, Jan. 30, 1995, 95-1 CPD ¶ ____ (involving facsimile bids and bid modifications). In addition, we have specifically recognized a facsimile transmission from an agency as constituting adverse action on what the protester asserts was an agency-level protest. See Ciba Corning Diagnostics Corp.--Recon., B-247617.2, Mar. 31, 1992, 92-1 CPD ¶ 327.

Since American received notice of the denial of its agency-level protest on December 2, 1994, and did not protest here until December 19, its protest was properly dismissed.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel