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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-210649.2

**DATE:** June 21, 1983

**MATTER OF:** Maxson Corporation--  
Reconsideration

**DIGEST:**

Prior decision dismissed claim for bid preparation costs because protest of matters upon which claim was based was not timely filed with agency. Protester now asserts new facts which, if accepted as true, would make agency protest timely. However, claim is dismissed and prior decision is affirmed because protest was not filed with GAO within 10 working days of agency denial of protest.

Maxson Corporation (Maxson) requests reconsideration of our decision in Maxson Corporation, B-210649, March 7, 1983, 83-1 CPD 227, which dismissed Maxson's claim for proposal preparation costs in connection with its participation in a procurement under request for proposals No. DAAK70-82-Q-1216, issued by the Army Mobility Equipment Research and Development Command (Army), Fort Belvoir, Virginia.

In that decision, we found that Maxson's claim was not based on matters timely protested--a prerequisite for our consideration of such claims. We stated that Maxson had known the basis for a protest and claim on August 31, 1982, yet did not file its claim with the Army until October 20, 1982. We then stated that "[e]ven if Maxson's claim of October 20, 1982, is considered a protest to the Army, which it does not appear to be," it was untimely filed.

Maxson's claim is based on the Army's allegedly improper failure to negotiate with it. In finding that Maxson knew this on August 31, 1982, we relied on statements made in a letter of December 1, 1982, from Maxson to the Army concerning its claim. In that letter, Maxson stated that it had been audited by the Army on August 27, 1982, and told that if the audit was satisfactory, it would be selected for a final negotiating session. Maxson stated

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further that on August 31, 1982, the Army auditor "advised us that Fort Belvoir notified him that it was not necessary for him to submit the August 27, 1982, audit \* \* \* since they had selected another company for placement of the order." Maxson then called the contracting activity and was advised that "if [Maxson] had read the fine print [the Army] do[es] not have to give [Maxson] an opportunity to negotiate."

Maxson now claims that it did not know with certainty that it would not be permitted to negotiate until it received the official notice of award on October 7, 1982, and that conversations with the Army after August 31 led it to believe that the Army was still considering negotiations with Maxson.

Even accepting these assertions, we will not consider Maxson's claim because the denial of its "protest" with the Army was not appealed to GAO in a timely manner. Section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1983), requires protesters who file protests initially with the contracting agency to file any subsequent protest with GAO within 10 working days of knowledge of initial adverse agency action. Maxson's claim was denied by the Army by letter of December 21, 1982, and received by Maxson on December 23, 1982. This was initial adverse agency action. Maxson's claim with GAO was not filed until January 31, 1983--substantially more than 10 working days later. We dismissed a claim for bid preparation costs in similar factual circumstances in The Land Group of Salt Lake City, B-202423, April 16, 1981, 81-1 CPD 296.

We affirm our prior decision dismissing Maxson's claim.

*F. H. Barclay*  
for Harry R. Van Cleve  
Acting General Counsel