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DECISION



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

FILE: B-202094.2 **DATE:** June 10, 1981
MATTER OF: Envirotronics

DIGEST:

Protest filed in GAO more than 10 days after denial of protest to agency is untimely. Letter allegedly sent to GAO but never received in our Office cannot be considered "filed" for timeliness purposes. Moreover, mere transmittal of copy of protest letter filed with contracting officer is not considered a direct protest to our Office. Protest is dismissed.

Envirotronics has protested against award of contracts to Wells Marine, Inc., and Galion Amco, Inc., by the Department of the Army pursuant to solicitation No. DAAA09-80-R-0358. Envirotronics alleges that Wells Marine, Inc., and Galion Amco, Inc., are controlled by one stockholder and, therefore, the awards were not legitimate split awards as contemplated by the solicitation. Envirotronics also alleges that Wells Marine, Inc., was nonresponsive to the solicitation's requirements but was allowed to become responsive after submission of initial offers.

The first correspondence from Envirotronics concerning this matter was received in our Office on April 14, 1981. This submission indicated that Envirotronics had sent our Office a letter on February 17, 1981, but had received no acknowledgment from us. In fact, the original of the February 17, 1981, letter from Envirotronics was never received by our Office. The February 17, 1981, letter (furnished us by Envirotronics on April 14) stated in full:

"Envirotronics, Inc. is protesting the award of Solicitation No. DAAA09-80-R-0358. Transmitted herewith is

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an information copy of the letter directed to the Principal Contracting Officer, [name deleted]."

Enclosed with the February 17, 1981, letter, apparently, was a copy of a February 13, 1981, protest letter to the contracting officer.

The Army argues that Envirotronics' protest to our Office is untimely since the contracting officer denied Envirotronics' February 13 protest to the contracting officer by letter of February 25, 1981. The Army further argues that Envirotronics had 10 days from receipt of the denial of its protest by the contracting officer to file a timely protest with our Office. The Army contends that we should consider Envirotronics' protest to have been filed in our Office on April 14 or more than 10 days after denial by the contracting officer. We agree with this view.

Our Bid Protest Procedures require that a protest to our Office be filed within 10 days of the initial adverse agency action on a protest filed initially with the contracting agency (4 C.F.R. § 20.2(a) (1980)) and define "filed" as "receipt * * * in the General Accounting Office." (4 C.F.R. § 20.2(b)(3)).

Since we never received the February 17 letter from Envirotronics, Envirotronics' protest must be considered to have been filed upon receipt of the initial submission by our Office on April 14. Protesters are specifically advised in our Bid Protest Procedures, at 4 C.F.R. § 20.2(b)(3), to transmit protests in the manner which will assure the earliest receipt by our Office. Consequently, except where the protest "was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the final date for filing a protest" (4 C.F.R. § 20.2(b)(3)), a protester makes use of regular mail for the filing of a protest at his own risk. A delay or loss in the mails will not serve as a basis for considering an untimely filed protest. See Lee Roofing Co.--Reconsideration, B-201154, April 29, 1981, 81-1 CPD 330, and cases cited therein.

Moreover, since Envirotronics' February 17, 1981, letter to our Office merely stated that an information copy of the letter to the contracting officer was being transmitted to us, we do not consider the February 17 letter to be a direct protest to our Office. Accordingly, since Envirotronics did not actually protest to our Office until April 14--more than 10 days after denial of its protest by the contracting officer--the protest in our Office was untimely filed.

Finally, Envirotronics argues that it has filed a Freedom of Information Act request with the Army which may give it sufficient information to substantiate its claim that Wells Marine, Inc., was nonresponsive and that this information has not been furnished it by the Army. To the extent that information received under that request may provide Envirotronics with new grounds for protest, we will consider such issues if filed in a timely manner under our Bid Protest Procedures.

The protest is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel