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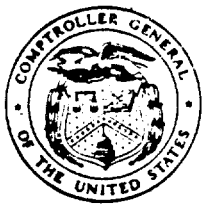
DECISION



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

FILE: B-211040 **DATE:** March 22, 1983

MATTER OF: Horst Manufacturing Company

DIGEST:

Protest is untimely where filed more than 10 days after protester was advised of initial adverse agency action on protest initially filed with the agency.

Horst Manufacturing Company (Horst) protests the Department of the Army's (Army) rejection of its bid as nonresponsive under invitation for bids (IFB) No. DAAE07-82-B-B434. We dismiss the protest as untimely.

Bid opening was on October 14, 1982. By letter of November 30, 1982, the Army advised Horst that because Horst's bid was considered ambiguous, it was rejected as nonresponsive. Horst protested this determination to the Army in a letter dated December 2, 1982. By letter dated January 5, 1983, the Army responded to the December 2 letter of protest and upheld its November 30, 1982, finding that Horst's bid was ambiguous and must be rejected as nonresponsive.

Subsequently, in a February 8, 1983, letter to the Army, Horst asserted that the Army's letter of January 5, 1983, did not indicate that it was a final determination of its protest and requested same. By letter of February 25, 1983, the Army advised Horst that the January 5, 1983, letter was the final decision. On March 9, 1983, Horst filed a protest with GAO.

Our Bid Protest Procedures require that where a protest is timely filed initially with the contracting agency, any subsequent protest to the GAO must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a) (1982).

Here, Horst timely filed a protest with the Army on December 2, 1982. See 4 C.F.R. § 21.2(b)(2) (1982). The letter of January 5, 1982 (received by Horst by February 8, 1983, at the latest), constituted unequivocal initial adverse agency action under our Bid Protest Procedures. In view of the initial adverse agency action, Horst did not

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have the option of requesting a "final" decision from the contracting officer before filing a protest with GAO. BKC Incorporated; RAIL Company; JWK International Corporation, B-198905, June 10, 1981, 81-1 CPD 474; Information International, Inc., B-191013, May 31, 1978, 78-1 CPD 406. Thus, Horst's protest filed with GAO more than 10 working days after receipt of this letter is untimely. 4 C.F.R. § 21.2(a) (1982). The fact that the protester continued to pursue its protest with the agency did not extend the time for protesting to GAO. J. J. Broderick Company, Inc., B-208798, September 27, 1982, 82-2 CPD 286; Blakeslee Arpaia Chapman, Inc. and Charles Stokes d/b/a C. Stokes Construction Company, B-206394, March 8, 1982, 82-1 CPD 213; Control Data Corporation, B-193487, December 12, 1978, 78-2 CPD 408.

We dismiss the protest.

Harry R. Van Cleve
Acting General Counsel