

DECISION

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

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FILE: B-216437 **DATE:** December 24, 1984
MATTER OF: Martel Construction Co., Inc.

DIGEST:

A complaint concerning the award of a contract under a federal grant filed with GAO 2 months after notification of adverse action by the grantor agency and exhaustion of administrative appeal procedures is not filed within a reasonable time and is dismissed.

Martel Construction Company, Inc. (Martel), complains concerning the award of a contract for wastewater treatment systems improvement to D&L Building, Inc. (D&L), under Environmental Protection Agency (EPA) project No. C-560136-03, pursuant to a grant to Riverton, Wyoming.

We dismiss the complaint as untimely.

On April 23, 1984, the city of Riverton's (City) water and sewer committee recommended award to D&L and on that date Martel lodged a protest with the City arguing that D&L's bid was nonresponsive. On May 1, 1984, the City rejected Martel's protest and the City Council voted to make award to D&L. Martel protested to the City again on May 7, 1984, contending, in addition to its other protest points, that D&L's bid, which contained a mistake, was improperly corrected by the City. The City Council again denied Martel's protest and on May 9, 1984, recommended award to D&L. Pursuant to 40 C.F.R. § 33.1115(a) (1983), Martel appealed the City's adverse decision to EPA's Region VIII Administrator. The Regional Administrator, by decision dated July 13, 1984, denied Martel's protest. A certified mail receipt indicates that Martel received the July 13 decision on July 19. On August 3, 1984, Martel filed a request for reconsideration with the Regional Administrator. The Regional Administrator summarily dismissed the reconsideration request on August 24, 1984. By letter dated September 12, 1984, and filed (received) at GAO on September 17, 1984, Martel requested that this Office review EPA's decisions.

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We consider grant complaints pursuant to our public notice entitled "Review of Complaints Concerning Contracts Under Federal Grants," 40 Fed. Reg. 42406, September 12, 1975. We do so, however, only where the complaint has been filed within a reasonable time so that we can consider an issue while it is still practicable to recommend corrective action if warranted. O.K. Lumber Company, Inc., B-209741, Feb. 17, 1983, 83-1 C.P.D. ¶ 165.

We consider Martel's complaint, filed approximately 2 months after Martel received notice of the EPA's denial of Martel's administrative appeal, to not have been filed within a reasonable time. O.K. Lumber Company, Inc., B-209741, supra. We have held that where a grantor, such as EPA, has established procedures for identifying and resolving problems concerning grantee procurements, we will not consider a complaint unless the matter first has been reviewed by the grantor agency. Longo-Puerto Rico, Inc., B-212317, Aug. 29, 1983, 83-2 C.P.D. ¶ 275. Since, however, EPA's regulations clearly state that "the award official's determination shall constitute final EPA action from which there shall be no further administrative appeal," we view the July 13, 1984, denial of Martel's complaint by the Regional Administrator (the award official) to be the point at which Martel exhausted its administrative remedies for purposes of filing a complaint with GAO. See 40 C.F.R. § 33.1145(g) (1983). As stated above, Martel's 2-month delay in filing its complaint with GAO after exhausting its administrative remedies is unreasonable and, therefore, we will not consider the complaint on its merits.

The complaint is dismissed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel