

DECISION



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

31025

FILE: B-218347.2 DATE: April 19, 1985
MATTER OF: Johnson Controls, Inc.--Reconsideration

DIGEST:

Prior dismissal of protest as untimely is affirmed where protest was not filed at GAO within 10 days of the protester's receipt of adverse agency action on protest initially filed with agency.

Johnson Controls, Inc. (Johnson) requests reconsideration of the dismissal of its bid protest as untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which require a protest to be filed here within 10 working days of the protester's knowledge of adverse action on the protest first filed with the agency.

We affirm our prior dismissal.

Johnson's protest letter indicated that it had protested to the Corps of Engineers by letter dated February 7, 1985, and that by letter dated February 15, received March 1, the Corps essentially denied Johnson's protest, by confirming its decision to accept the contractor's use of the Honeywell system. The protest, dated March 12, was received in our Office on March 18.

Johnson agrees that its 10-day period for protesting here began to run on March 1; it believes, however, that its protest dated March 12 is timely. It is not the date on the protest that controls, however; rather, it is when we receive it that is determinative. See 4 C.F.R. § 21.2(b), which defines "filed" as receipt in this Office. Since March 18 must be considered the filing date, and since that date is 11 working days after March 1, the protest properly was viewed as untimely.

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Therefore, we affirm the dismissal.^{1/}

for *Raymond E. Egan*
Harry R. Van Cleve
General Counsel

^{1/} The protest involves the award of a subcontract, a fact we overlooked initially. We only consider such protests if the subcontract award is "by or for" the government, 4 C.F.R. § 21.3(f)(10), which is not the case here. Therefore, regardless of timeliness, we would not consider this protest.