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DECISION



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

FILE: B-218888.2 **DATE:** June 24, 1985

MATTER OF: Motorola Inc.--Reconsideration

DIGEST:

Under 4 C.F.R. §§ 21.1(d) and (f) (1985) of GAO's Bid Protest Regulations, a protest may be dismissed where the protester fails to furnish a copy of the protest to the contracting officer within 1 day after the protest is filed with GAO. We reverse our earlier dismissal of the protest as the agency was aware of protest basis prior to GAO's receipt of the protest and the protester was only 3 days late in furnishing a copy of its protest to the contracting activity in Europe and used reasonable means to facilitate expeditious delivery.

Motorola Inc. (Motorola), requests reconsideration of our May 24, 1985, dismissal of its protest of an award of a contract under request for proposals DAJA37-85-C-0529, issued by the United States Army Contracting Agency, Europe, Frankfurt/Main, Germany.

Our earlier dismissal of the protest is reversed and the protest is reinstated.

Motorola originally protested to our Office on May 13, 1985, but the contracting officer in Germany did not receive a copy of Motorola's protest until May 17. Since our Bid Protest Regulations require that a copy of the protest filed at our Office be received by the contracting activity no later than 1 day after the protest is filed at our Office, we dismissed Motorola's protest. 4 C.F.R. §§ 21.1(d) and (f) (1985). Motorola requests that we reconsider our dismissal.

Motorola states that on May 1, 1985, a letter was sent by telegram to the contracting officer protesting the award, with the original signature copy of that letter sent by United States mail to the contracting officer. On May 3, a followup letter with details concerning technical noncompliance was sent by International Federal Express courier to

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the contracting officer. On May 7, a telegram was sent to the contracting officer stating Motorola was going to protest to the General Accounting Office (GAO) since it had not received any response to its agency protest. On May 13, a protest was filed with GAO and a copy was sent by International Federal Express courier to the contracting officer in Germany.

Motorola argues that although the copy of its May 13 protest to our Office was not received by the contracting officer within 1 day of its receipt at our Office, the contracting officer had already been provided the total substance of Motorola's protest on May 1 and 3 and had also been provided notice on May 7 that a protest was being filed with our Office.

Under 4 C.F.R. §§ 21.1(d) and (f) (1985) of our Bid Protest Regulations, whenever a protester fails to furnish a copy of its protest to the contracting officer within 1 day after the protest is filed with our Office, the protest may be dismissed. In this case, however, we do not find that dismissal of the protest is required. Motorola initially pursued its protest with the Army and, although the contracting officer may not have timely received a copy of the submission filed with our Office, he had actual knowledge of the grounds which formed the basis for Motorola's protest at the time the protest was filed with our Office. See Sabreliner Corporation, B-218033, Mar. 6, 1985, 85-1 C.P.D. ¶ 280. Motorola apparently sent a copy of its protest to the contracting officer in Europe by reasonable means to facilitate expedited delivery, i.e., International Federal Express courier. Under these circumstances, we reverse our earlier dismissal and reinstate Motorola's protest. A report has been requested from the Army responsive to the protest.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel