

DECISION

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

FILE: B-222934.2 **DATE:** May 27, 1986

MATTER OF: Elbert Transfer Co.--Request for
Reconsideration

DIGEST:

1. The fact that a protester continues to pursue a protest with the contracting agency after notice of initial adverse agency action does not extend the time for filing the protest with the General Accounting Office.
2. When, in requesting reconsideration of a protest dismissed as untimely because it was not filed within 10 days of initial adverse agency action, the protester does not show that the dismissal was factually or legally incorrect or present new information as to when it learned of the denial of an agency-level protest, the General Accounting Office will deny the request for reconsideration.

Elbert Transfer Co. requests reconsideration of our April 29, 1986, dismissal of its protest against an award under invitation for bids No. F05611-86-B-0028, issued by the United States Air Force Academy, Colorado Springs, Colorado.

We deny the request for reconsideration.

In protests to the Air Force and to our Office, Elbert alleged that the Air Force had improperly accepted a late bid from Security Moving and Storage that was considerably less than its own. Elbert's submissions to our Office indicated that the firm had protested orally when the bid opening officer accepted and read Security's bid after having declared that it was 2 p.m., the time set for opening on March 19, 1986. When the Air Force awarded a contract to Security, Elbert filed a formal agency-level protest that the Air Force denied by letter dated March 31, 1986. Elbert sought reconsideration by the Air Force, but the agency affirmed the denial by letter dated April 8, 1986. Elbert then protested to our Office by letter dated

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April 17, 1986, again alleging that Security's bid was late. Although we originally sent a notice of acknowledgment to Elbert, we subsequently determined that the protest should be dismissed as untimely.

Under our Bid Protest Regulations, if a protest is initially filed with the contracting agency, any protest to our Office on the same basis must be filed, i.e., received here, within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1985). Adverse agency action is any action or inaction that is prejudicial to the position taken in a protest filed with the agency. Weitzul Construction, Inc., B-216036, Feb. 12, 1985, 85-1 CPD ¶ 184. In this case, the Air Force's letter of March 31, 1986 constituted initial adverse agency action. For Elbert's protest to our Office to have been timely, it should have been filed within 10 working days of Elbert's receipt of that letter; the fact that Elbert continued to pursue the matter with the agency did not extend the time for protesting to our Office. BTH Thinning, B-217105, Jan. 16, 1985, 85-1 CPD ¶ 44.

The time/date stamp on Elbert's protest to our Office indicated that we did not receive it until 9:12 a.m. on April 28, 1986. We concluded that even allowing a reasonable time--generally 5 working days--for transmittal of the Air Force's letter of March 31, 1986 to Elbert, more than 10 working days had elapsed between the firm's notice of initial adverse agency action and our receipt of the protest. See, e.g., Global Crane Institute, B-217306, Jan. 23, 1985, 85-1 CPD ¶ 92. The timing of the protester's appeal to the Air Force supported this conclusion, and we therefore dismissed the protest.

For a protester to prevail on reconsideration, it must present factual or legal grounds that warrant reversal or modification of the original decision or information that our Office did not previously consider. 4 C.F.R. § 21.12(a). In its request for reconsideration, Elbert merely questions why we first acknowledged, then dismissed, its protest. It does not allege or prove that the dismissal was factually or legally incorrect or present any new information as to when it first learned that the Air Force had denied its protest.

The request for reconsideration is denied.


for Harry R. VanCleve
General Counsel