



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Smith Kline & French Laboratories--  
Reconsideration  
File: B-228079.2  
Date: September 16, 1987

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### DIGEST

Dismissal of protest for protester's failure to file a copy of protest with contracting officer within 1 day after filing with General Accounting Office is affirmed. Agency did not receive copy of protest and otherwise had no knowledge of protest basis; and whether the protester may have forwarded a copy within the necessary period is not relevant, since the requirement is for receipt by the agency.

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### DECISION

Smith Kline & French Laboratories requests that we reconsider our August 27, 1987, dismissal of its protest of the Veterans Administration's (VA) award of a contract under solicitation number M5-Q323-87 for Cefazolin Sodium, Sterile. We dismissed the protest, filed on August 19, 1987, because on August 27, 1987 the VA advised our Office that Smith Kline had not provided it with a copy of the protest. Therefore, Smith Kline failed to comply with section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. part 21 (1987), which states that the contracting officer must receive a copy of the protest within 1 working day after the filing in our Office. Smith Kline contends that it forwarded a copy of its protest to the VA. We affirm the dismissal.

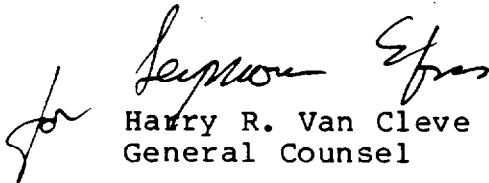
The rationale for the 1-day notice requirement in our Regulations is found in the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (Supp. III 1985), which requires the contracting agency to file a written report with our Office within 25 working days after we notify the agency of the protest. Any delay in furnishing a copy of the protest to the contracting agency not only hampers the agency's

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ability to meet the 25-day statutory deadline, but also frustrates our ability to consider all objections to agency procurement actions in as timely a fashion as possible. Refac Electronics Corp.--Reconsideration, B-226034.2, February 4, 1987, 87-1 C.P.D. 117.

Although Smith Kline asserts it sent a copy of its protest to the VA on August 19, 1987, the date the protest was filed, the firm does not have a record of receipt since Smith Kline allegedly sent the copy of the protest through the regular mail system. The fact that the protester may have mailed a copy within the necessary period, moreover, is not relevant, since the requirement is for receipt by the agency. In the absence of any evidence to the contrary, or that VA otherwise should have known the basis for the protest, by Smith Kline, Refac Electronics Corp.--Reconsideration, B-226034.2, supra, the protest was properly dismissed.

Our prior decision is affirmed.

  
for  
Harry R. Van Cleve  
General Counsel