



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: St. Joseph Motor Lines

File: B-230211.2

Date: May 6, 1988

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### DIGEST

1. Protest filed more than 10 working days after protester knew the basis for its protest is untimely.
2. Though firm may choose to pursue a matter with the contracting agency instead of filing a protest, even after the agency has advised that it reject's the firm's position, doing so does not toll the 10 working day period for filing a protest with our Office.

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### DECISION

St. Joseph Motor Lines (SJML) protests the rejection of its proposal as late under request for proposals No. DE-RP04-88AL51527 issued by the Department of Energy (DOE) for the transportation of transuranic waste to the Waste Isolation Pilot Plant.

The protest is dismissed.

The closing date was January 15, 1988, at 3:30 p.m. Since SJML's handcarried proposal was not received at the location designated for handcarried proposals until 1 p.m. on January 19, the contracting officer rejected SJML's proposal as being late. On February 2, an SJML employee contacted DOE by telephone regarding the status of SJML's proposal and the employee was told that SJML's proposal had arrived late and would not be considered. On February 3, SJML wrote DOE requesting reconsideration of its decision and on February 5, DOE responded to SJML's February 3 letter and informed SJML that no rationale had been provided by SJML which would warrant DOE's acceptance of the proposal.

On February 19, SJML again wrote DOE requesting that its proposal be accepted and on February 20, DOE responded that it was not able to alter its determination that SJML's proposal was late. On March 7, SJML filed its protest with our Office.

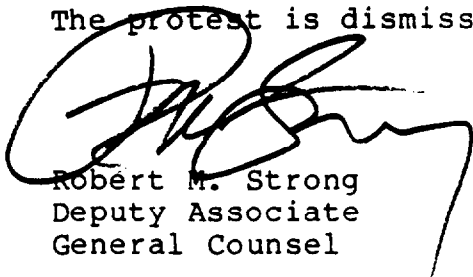
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Our Bid Protest Regulations require that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office (GAO) must be filed within 10 working days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3).

SJML was informed on February 2 that its proposal was rejected as late and accordingly, having been informed of its basis of protest, it had 10 working days from that date to protest the rejection. Although, SJML did not state in its February 3 letter to DOE that it was protesting the rejection, SJML's February 3 letter did request reconsideration and asked that DOE accept its proposal. On February 8, SJML received DOE's February 5 letter responding to SJML's request for reconsideration in which DOE set out the reasons SJML's proposal was considered late. Instead of protesting to GAO within 10 working days of February 8, SJML once again requested reconsideration of DOE's decision to reject its proposal. SJML did not protest to GAO until March 7, more than 10 working days after its initial notice of adverse agency action on February 2, when it was informed its proposal was late, and also more than 10 working days after receipt of DOE's February 5 rejection of its request for reconsideration.

A company may choose to continue pursuing a matter with the contracting agency instead of filing a protest, even after the agency has advised that it rejects the firm's position, but doing so does not toll the 10 working day period for filing a protest with GAO. Fairey Microfiltrex Division, B-227086, July 30, 1987, 87-2 CPD ¶ 117. Here, SJML knew the basis of its protest on February 2. We consider its February 3 letter to have been an agency level protest to which it received notice of initial adverse agency action on February 8. Since SJML did not file its protest with GAO until March 7, its protest is untimely. Even if SJML's February 3 letter were not considered to be an agency-level protest, its protest at GAO filed March 7 was well past its February 2 notification of its basis of protest.

The protest is dismissed.



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