

Baskin



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lake Region Propane Gas, Inc.--Reconsideration
File: B-231182.2
Date: May 24, 1988

DIGEST

Protest filed with the General Accounting Office (GAO) more than 10 days after the contracting agency denied the protester's agency-level protest is untimely. Protester's continued pursuit of the matter with the contracting agency before filing with GAO does not toll the time for filing.

DECISION

Lake Region Propane Gas Inc., requests reconsideration of our dismissal of its protest concerning the award of a contract under invitation for bids No. DAKF23-88-B-0026 issued by the Department of the Army, Fort Campbell, Kentucky.



We dismissed Lake Region's protest as untimely because it was not filed within 10 working days after Lake Region knew of the initial adverse agency action on its protest with the agency. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1988). The Army denied Lake Region's agency-level protest on April 4, 1988, but Lake Region did not file its protest with our Office until April 29.

Lake Region argues that it did not have actual or constructive knowledge of initial adverse agency action until April 25, when it received both the Army's denial of its request for reconsideration of the agency's initial protest decision and a notice that award had been made to another bidder. Lake Region states that it filed the protest here within 10 days after it received this information.

Section 21.0(f) of our regulations defines adverse agency action as "any action or inaction on the part of the contracting agency which is prejudicial to the position taken in a protest filed with the agency," including a decision on the merits of a protest. The Army's April 4 letter was clearly a decision on the merits of Lake Region's

agency-level protest. Section 21.2(a)(3) is clear that it is knowledge of the initial adverse agency action on a protest at that level that triggers the 10-day period for filing a subsequent protest to our Office. Accordingly, initial adverse agency action occurred when the Army denied Lake Region's protest the first time. Lake Region's decision to continue to pursue the protest at the agency did not alter its responsibility to conform to the filing requirements of our regulations. Scientific Instrument Center, Inc., B-223429, Aug. 21, 1986, 86-2 CPD ¶ 210.

The dismissal is affirmed.


 Ronald Berger
Deputy Associate
General Counsel