



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Mackay Communications--Request for  
Reconsideration

**File:** B-238926.2

**Date:** April 25, 1990

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Roger W. Middlesteadt, for the protester.  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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### DIGEST

Request for reconsideration of protest that was dismissed as untimely is denied where the protest was filed with the General Accounting Office more than 10 working days after denial of firm's agency-level protest.

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### DECISION

Mackay Communications requests reconsideration of our March 15, 1990, dismissal as untimely of its protest challenging the cancellation of request for proposals (RFP) No. N00039-89-R-0017(Q), issued by the Space and Naval Warfare Systems Command for emergency transceivers. We dismissed Mackay's protest as untimely because it was filed with our Office more than 10 working days after the contracting agency denied the firm's agency-level protest.

We affirm our dismissal.

In a November 15, 1989, letter to the agency, Mackay stated that it found the manner in which the Navy handled, and presumably canceled, the solicitation unacceptable because "it was taken advantage of--to the amount of \$24,375, the cost of preparing a proposal for equipment which the Navy had no interest in procuring." Further, Mackay requested that the Navy review the procedures followed in the procurement to determine why the Navy had not acted in good faith and why it had not determined its needs prior to the issuance of the solicitation. Finally, Mackay requested reimbursement of its proposal preparation costs, based on its allegation that the Navy did not issue the solicitation in good faith. The Navy responded by letter dated

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December 28, and received by Mackay on January 4, 1990, stating that the cancellation was proper and denying Mackay's claim for costs.

Our Bid Protest Regulations provide that if an initial protest has been filed timely with the contracting agency, we will consider a subsequent protest to our Office if it is filed within 10 working days after formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21(a)(3) (1989). In this case, since Mackay's protest was not filed in our Office until March 14, more than 10 days after Mackay received the Navy's letter denying its agency-level protest on January 4, we dismissed the protest as untimely.

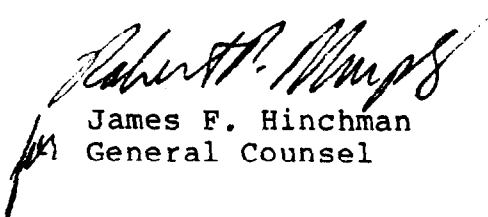
In its reconsideration request, Mackay contends that our Office improperly dismissed its protest as untimely because, even though it has corresponded with the agency in regard to the cancellation, the firm has never filed a formal protest with the agency. Consequently, Mackay states it did not consider the agency's December 28 letter to represent an agency-level denial of its protest. Further, Mackay adds that no correspondence between the agency and its firm indicated that a protest had been filed or denied.

Even though Mackay claims it never intended to lodge an agency-level protest, its November 15 letter, alleging bad faith and requesting an investigation, clearly conveyed dissatisfaction with the agency's decision to cancel and requested corrective action and, thus, constituted an initial protest. In this regard, even if a letter to an agency does not explicitly state that it is intended to be a protest, our Office nevertheless will consider it as such where, as here, it conveys an expression of dissatisfaction and a request for corrective action. Mammoth Firewood Co., B-223705, Sept. 4, 1986, 86-2 CPD ¶ 261. Moreover, the Navy's December 28 response clearly was a denial of the protest, since the Navy denied the firm's claim for proposal preparation costs on the basis that the agency properly canceled the solicitation. As a result, Mackay should have known upon receipt of the Navy's December 28 response that the letter was a formal notification of initial adverse action; Mackay, therefore, had 10 working days after that date to protest to our Office. Since Mackay's protest of the Navy's cancellation was not filed here until March 14, substantially more than 10 working days after receipt of the denial, it was untimely.

Mackay also argues that the Navy's December 28 letter, denying the firm's reimbursement of its proposal preparation costs, did not indicate that the matter could be further

protested to our Office. To the extent that Mackay is claiming that it would have filed its protest with our Office earlier if the agency denial had informed it of this option, we will not consider the protest on this basis; a protester's lack of actual knowledge of our Bid Protest Regulations is not a defense to dismissal of its protest as untimely because prospective protesters are on constructive notice of our Regulations, since they are published in the Federal Register and Code of Federal Regulations. Air Asia Co. Ltd., B-238011, Dec. 14, 1989, 89-2 CPD ¶ 555.

Our dismissal is affirmed.

  
James F. Hinchman  
General Counsel