



Comptroller General
of the United States

Washington, D.C. 20548

M. Golden

Decision

Matter of: Terry & Sons, Inc.--Reconsideration
File: B-242014.2
Date: February 4, 1991

Gertha M. Terry for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army.
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

A protest to the General Accounting Office that was not filed within 10 working days after the protester knew of initial adverse agency action on agency-level protest is untimely.

DECISION

Terry & Sons, Inc. requests reconsideration of our dismissal as untimely of its protest against the Department of the Army's failure to award it a contract and instead to make an award to Brown & Root. Terry argues that it timely filed its protest with our Office.

We affirm our dismissal.

On September 13, 1990, Terry submitted a quote for concrete to build storage sheds. The correspondence submitted by Terry shows that on September 18, Terry was advised orally of the award to Brown & Root. Terry received written notice of the award on September 19, 1990, and, on that same day, filed an agency-level protest of the award to Brown & Root. By letter dated September 27, 1990, the contracting officer denied Terry's protest. A subsequent letter by Terry addressed to the Army, dated September 28, 1990, shows that Terry received the Army letter denying its protest by that date. Terry did not file its protest with our Office until November 8, 1990.

Our Bid Protest Regulations require that where a protest initially has been filed with a contracting activity, any subsequent protest to the General Accounting Office, to be considered timely, must be filed within 10 working days of actual or constructive knowledge of initial adverse agency

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action on the agency-level protest. 4 C.F.R. § 21.2(a)(3) (1990). Here, although Terry received notice of the agency's denial of its protest by September 28, Terry did not protest to our Office until November 8. Accordingly, its protest to our Office was untimely. See Signal Corp., B-238507, Feb. 15, 1990, 90-1 CPD ¶ 282.

Ronald Berger

Ronald Berger
Associate General Counsel