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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-209567

DATE: November 17, 1982

MATTER OF: Marmac Industries, Inc.

DIGEST:

Protest filed with GAO more than 10 working days after the protester learned of the initial adverse agency action on its protest to agency is dismissed as untimely.

Marmac Industries, Inc. (Marmac), protests the award of a contract for goggles to Stemaco Products (Stemaco) by the Defense Personnel Support Center (DPSC) under invitation for bids (IFB) DLA100-82-B-0824. Marmac contends that Stemaco cannot meet the solicitation labor surplus area concern requirements and that Stemaco's proposed equipment cannot manufacture the item.

Marmac protested to the agency on August 13, 1982, and copied our Office. By letter dated August 24, 1982, we advised Marmac that the information copy of the agency protest was not a protest to GAO. We further advised Marmac that under our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1982), if a protest has been filed initially with the contracting agency, any subsequent protest to the GAO filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in a timely manner. Marmac had received this same advice from a GAO staff person on August 20, 1982.

Marmac states that on September 27, 1982, DPSC informed Marmac that DPSC had awarded the contract to Stemaco, following GAO advice that the protest had been withdrawn. While we have no record of such advice, the fact remains that award to Stemaco was clearly adverse to Marmac's agency protest and constituted initial adverse agency action under our Bid Protest Procedures. We did not receive Marmac's subsequent protest to this Office (dated October 8, 1982, and postmarked October 18, 1982) until October 21, 1982, more than 10 working days after Marmac learned of the initial adverse agency action. Therefore, Marmac's protest is untimely and will not be considered.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel