

Pietrovito  
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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** pH-logistics, Inc.

**File:** B-244162

**Date:** May 29, 1991

Fred Schattenstein for the protester.  
Guy R. Pietrovito, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

## DIGEST

Protest to the General Accounting Office (GAO) filed more than 10 working days after the protester learned of the initial denial of its agency-level protest is untimely; the fact that protester sought further agency consideration after learning of the denial of the agency-level protest does not toll GAO timeliness requirements.

## DECISION

pH-logistics, Inc. protests the rejection of its bid as unbalanced under invitation for bids (IFB) No. 688-17-90, issued by the Department of Veterans Affairs (VA).

We dismiss the protest as untimely because it was filed more than 10 working days after the protester learned of the denial of its agency-level protest.

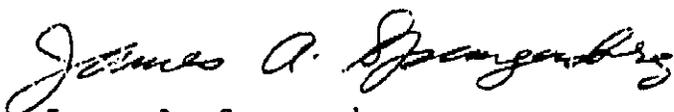
Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1991). The term "adverse agency action" is defined in our Bid Protest Regulations as any action or inaction on the part of a contracting agency that is prejudicial to the protest filed with the agency. 4 C.F.R. § 21.0(f); Consolidated Indus. Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58.

These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air, Inc.--Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.

The record shows that pH-logistics learned that its bid was rejected on November 7, 1990, and timely protested to the agency on November 7. VA denied the agency-level protest on January 11, 1991. This constituted "initial adverse agency action" that required pH-logistics to protest to our Office within 10 working days of when it learned of the denial. pH-logistics, however, continued to pursue further consideration from the contracting agency, which resulted in further denials of its continuing protests on March 21 and May 9.

The fact that pH-logistics continued to pursue agency consideration of its protest grounds after the initial denial of its agency-level protest does not toll our timeliness requirements; once informed of initial adverse agency action, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the matter with the agency. Techniventas, S.A.--Recon., B-240323.2, Oct. 19, 1990, 90-2 CPD ¶ 320. Since pH-logistics did not file its protest with our Office within 10 working days of the agency's initial denial of the agency-level protest, its subsequent protest to our Office is untimely.

The protest is dismissed.



James A. Spangenberg  
Assistant General Counsel