

**DECISION**

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

**FILE:** B-218340.3

**DATE:** September 18, 1985

**MATTER OF:** Sermor, Inc.--Reconsideration

**DIGEST:**

Prior dismissal is affirmed on reconsideration where comments addressed in manner other than that set forth in section 21.1(b) of GAO's Bid Protest Regulations were filed with the contracting agency instead of GAO. Such filing does not toll the timeliness requirements of GAO's Regulations.

Sermor, Inc. (Sermor), requests reconsideration of our dismissal of its protest concerning the rejection of its bid under request for quotations (RFQ) No. DAAE-07-85-Q-U305, issued by the United States Army Tank-Automotive Command. We dismissed the protest because Sermor failed to respond to the Army's report on the protest within 7 working days after the report was received by Sermor as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985). The Regulations provide that a protester's failure to file comments, or a statement requesting that the protest be decided on the existing record, or a request for extension of the period for submitting comments within the 7-day period, will result in the dismissal of the protest. For the reasons discussed below, we affirm our dismissal.

Sermor's initial protest was filed March 18, 1985; however, we dismissed the protest because it did not state a basis for protest. See 4 C.F.R. § 21.1(c)(4). Thereafter, by letter of April 2, 1985, Sermor sought and obtained reinstatement of its protest. On April 15, an acknowledgment of the protest was sent to both the protester and the contracting agency advising them, among other things, of the procedural requirements for processing the matter, i.e., the agency's report was due May 20, and Sermor's comments or request for a decision based on the existing record was due 7 working days after receipt of the report. The acknowledgment also notified Sermor that failure to comply with the 7-day comment requirement would result in our closing the file without a decision on the merits.

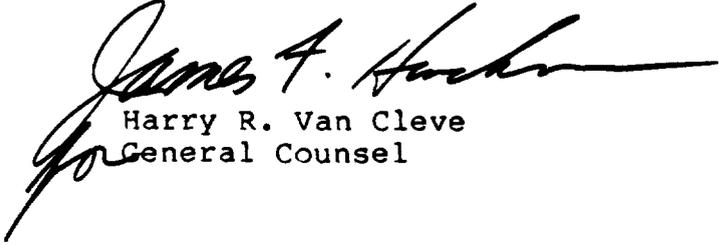
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The agency's report was received in our Office on May 20, 1985. On May 29, we received a letter from Sermor stating that its copy of the report was received on May 24 and advising us that comments would be filed on June 5, which was 7 working days after Sermor's receipt. Sermor's comments were not received on June 5; therefore, in accordance with our Regulations, 4 C.F.R. § 21.3(e), on June 10, 1985, we closed our file. Subsequently, on June 13, we received from the Army's Command Counsel, Sermor's comments (dated June 4) on the agency's report. The envelope was postmarked June 5, addressed to the Comptroller General, Mr. Bowsher, Office of Command Counsel, Department of the Army, and was received by certified mail on June 10, 1985, at Army Headquarters in Alexandria, Virginia. In its reconsideration request, Sermor concedes that the comments were misaddressed; nevertheless, the protester maintains that its comments were timely and urges consideration of the merits of the protest.

Sermor was required to file its comments on the administrative report with our Office, with a copy to the contracting agency and any interested parties, by June 5, 1985. 4 C.F.R. § 21.3(e). Furthermore, Sermor was required to address its comments and/or correspondence regarding the protest in the manner prescribed by our Regulations. 4 C.F.R. § 21.1(b). Sermor's letter filed with the contracting agency instead of GAO does not toll the timeliness requirements of our Regulations. Stroh Corporation, B-209470, Feb. 8, 1983, 83-1 C.P.D. ¶ 143. Accordingly, our prior dismissal is affirmed.

We note, however, that the record shows that the protester's bid was rejected because the contracting officer determined Sermor to be nonresponsible but no referral was made to the Small Business Administration (SBA) for consideration under its certificate of competency procedures because a small purchase contract was contemplated. Federal Acquisition Regulation, 48 C.F.R. § 19.602-1(a)(2) (1984). However, the recent enactment of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, § 401, 98 Stat. 3079, effective October 30, 1984, requires all nonresponsibility determinations to be referred to the SBA for review regardless of the dollar value of the contract. Sess Construction Co., B-216924 et al., 64 Comp. Gen. \_\_\_\_ (1985), 85-1 C.P.D. ¶ 319.

We point out that the SBA has amended its regulation to comply with the new law. 13 C.F.R. § 125.5(d), March 27, 1985. Therefore, we expect that future determinations of nonresponsibility will be referred to the SBA in keeping with the above-cited law.



Harry R. Van Cleve  
General Counsel