

DECISION



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

[Protest of Bid Rejection as Nonresponsive, 878]

FILE: B-194979.2

DATE: JUL 30 1979

MATTER OF: Central Air Service--
Reconsideration

DLG 02313

DIGEST:

Thirty day time limit for appealing to agency head any adverse contracting officer's decision under standard contract disputes clause is not applicable to appeals taken to contracting officer's denial of bid protest relating to contract formation. GAO Bid Protest Procedures are applicable to a protest filed initially with contracting agency and subsequently appealed to GAO.

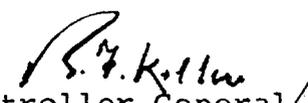
Central Air Service (Central) requests reconsideration of our decision in Central Air Service, B-194979, June 27, 1979, 79-1 CPD 462, dismissing as untimely its protest regarding the rejection of Central's bid as nonresponsive by the Department of Agriculture (Agriculture) under invitation for bids No. 49-79-01.

Central argues that its protest was timely because it appealed the contracting officer's initial denial to the agency head within 30 days in accordance with the procedures stated in the standard contract disputes clause contained in the solicitation. Moreover, the protester contends that its appeal under the disputes clause procedures was acted on and denied by another Agriculture official who also advised the protester of the procedures for appealing to GAO.

The disputes clause applies to disputes arising once the contract is awarded and has no application to bid protest matters involving questions of contract formation. As Central was not awarded the contract, it could not properly proceed under the contract clause nor could its basis for protest have arisen

under the contract. Thus, GAO Bid Protest Procedures published at 4 C.F.R. Part 20 et seq. were applicable to Central's protest which was filed initially with the contracting agency and subsequently appealed to GAO. The fact that its "appeal" under the disputes clause was acted on by another agency official does not excuse the protester's failure to appeal the initial adverse agency action on the protest as required by our procedures. Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412; Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29.

Consequently, we find Central has not shown that our prior decision was based on any error of fact or law, and that decision is affirmed.


/Deputy Comptroller General/
of the United States