

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

26530

FILE: B-212494.2**DATE:** October 14, 1983**MATTER OF:** Barber Industrial--Request for
Reconsideration**DIGEST:**

1. Protest is untimely where the protester knew or should have known the basis of its protest well before 10 working days prior to the date the protest was filed.
2. GAO's Bid Protest Procedures have been published in the Federal Register, so that all protesters are charged with constructive notice of their contents.

Barber Industrial requests reconsideration of our decision, Barber Industrial, B-212494, August 4, 1983, 83-2 CPD ____, dismissing as untimely the firm's protest of the award of a contract under solicitation No. DTFR54-83-R-0019 issued by The Alaska Railroad, Department of Transportation. We dismissed the protest because Barber did not file it within 10 working days after knowing of the contracting agency's adverse decision on the firm's protest at that level, as required by section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983). Barber now asserts that it did not actually protest with the agency and, in any event, that the firm was unaware of the timeliness requirements imposed by our Bid Protest Procedures.

We affirm our prior decision.

Barber was concerned about the award because its offer was lower-priced than the awardee's, and because it viewed the awardee's proposal as technically unacceptable. As we discussed in our August 4 decision, Barber sought an explanation for the June 3, 1983 award from the contracting officer during the period from June 16 to June 23. We assumed that June 16 was the date of an initial protest to the contracting agency and, as Barber received no satisfactory explanation by June 23, we concluded that June 23 constituted the latest date by which Barber had notice that the agency's position was adverse to its interests. Therefore, its July 26 protest to this Office, filed beyond the 10

026940

working day period, was clearly untimely, and accordingly dismissed.

Barber now asserts that it was not in fact protesting to the agency when it sought an explanation for the award during the period from June 16 to June 23. Accepting Barber's assertion as true, we find the protest was still untimely. Under section 21.2(b)(2) of our Procedures, any protest alleging other than solicitation deficiencies must be filed with the contracting agency or with this Office not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. In this case, award to Barber's competitor was made on June 3; a formal notice to that effect was sent to all unsuccessful offerors on June 15; and Barber knew the prices and equipment offered by the awardee when it sought explanation of the award from the agency beginning on June 16. We also note that the contract itself was completed on June 24. Giving Barber all benefit of the doubt, we must conclude that the firm knew or should have known the basis of its protest well before 10 working days prior to its July 26 protest to this Office. See Harter Corporation, B-210927.2, June 21, 1983, 83-2 CPD 13.

Barber also states that it was unaware of our filing requirements, and that it waited for the return of the employee who had prepared its original proposal before proceeding with the protest. Although these circumstances are unfortunate, our Bid Protest Procedures are published in the Federal Register at 40 Fed. Reg. 17979 (1975) and 48 Fed. Reg. 1931 (1983), so that all potential protesters are charged with constructive notice of their contents. See Economy Data Products, Inc., B-211659, May 12, 1983, 83-1 CPD 506.

In its request for reconsideration, Barber also asks us to address the merits of its protest for informational purposes, even if we affirm our prior decision as to the untimeliness of its protest. Under section 21.2(c) of our Procedures, however, we will only consider an untimely protest for good cause shown, or when it raises issues significant to procurement practices or procedures. We do not believe that Barber's protest falls within those

B-212494.2

exceptions. See Dixie Business Machines, Inc., B-208968,
February 7, 1983, 83-1 CPD 128.

Our prior decision is affirmed.

for *Milton J. Fowler*
Comptroller General
of the United States