

*McConnell*

**DECISION**



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

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**FILE:** B-213447

**DATE:**

November 29, 1983

**MATTER OF:** Baldwin-Hamilton Company

**DIGEST:**

A protest filed with GAO 5 months after an initial protest was filed with the contracting agency is untimely under GAO Bid Protest Procedures where the protester has reason to know that the agency has permitted the contract to be substantially performed or completed.

Baldwin-Hamilton Company protests the award of a contract for diesel engine cylinder sleeves to Hatch & Kirk, Inc. under solicitation No. DLA700-83-R-0982 issued by the Defense Construction Supply Center (DCSC). Baldwin-Hamilton contends that Hatch & Kirk failed to submit certain information with its bid as required by the solicitation and concludes therefore that the DCSC awarded the contract without adequate assurance of the type of cylinder sleeve Hatch & Kirk would supply. Baldwin-Hamilton also asserts that the DCSC improperly prevented the firm's examination of certain bidding documents until the contract had been performed.

We dismiss the protest.

The DCSC awarded the contract on March 29, 1983, and notified Baldwin-Hamilton of the award on April 4. On that same date, Baldwin-Hamilton requested copies of the bid abstract and of certain product verification information Hatch & Kirk allegedly was required under the solicitation to submit with its bid. After Baldwin-Hamilton sent another letter reiterating its request, the DCSC responded on May 9 by sending the firm a copy of the bid abstract. On May 20, Baldwin-Hamilton filed a protest with the DCSC against the contract award to Hatch & Kirk and again requested the product information. Baldwin-Hamilton thereafter submitted its request several more times. On October 11, the DCSC sent a reply stating that the contract had been performed. Baldwin-Hamilton consequently filed a protest here on October 18.

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Our Bid Protest Procedures state that a protest timely filed initially with the contracting agency must be filed with this Office within 10 working days of the protester's actual or constructive knowledge of any initial adverse agency action. 4 C.F.R. § 21.2(a) (1983). In this regard, a contracting agency's acquiescence in and active support of continued contract performance in the face of a protest constitutes adverse agency action where the protester has reason to know that the agency has permitted the contract to be substantially performed or completed. Singleton Enterprises, B-194491, April 18, 1979, 79-1 CPD 276.

We draw no conclusion in this case as to whether Baldwin-Hamilton's protest to the DCSC was timely filed since, in any event, we believe that 5 months is too long for the firm to wait after filing that protest to file a protest here. Baldwin-Hamilton knew for over a month before it filed its protest with the DCSC that a contract had been awarded in March. Thus, even though Baldwin-Hamilton continued to contact the DCSC after it filed its protest, the firm should have promptly protested here when its inquiries were ignored and contract performance was proceeding to a point where we would be unable to grant any meaningful relief were we to sustain the protest. We conclude therefore that Baldwin-Hamilton's protest is untimely.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel