

DECISION

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

FILE: B-220293.2 **DATE:** October 18, 1985
MATTER OF: Milwaukee Industrial Clinics, S.C.--
Reconsideration

DIGEST:

Protester's assertion that it was unaware of the requirement to file protest with GAO within 10 working days after protester learned of adverse agency action on its protest initially filed with procuring agency is not basis for consideration of the protest since the protester is charged with constructive notice of GAO's Bid Protest Regulations through their publication in the Federal Register.

Milwaukee Industrial Clinics, S.C. (Milwaukee) requests reconsideration of our notice of September 19, 1985, which dismissed its protest that a provision in invitation for bids No. RO-V-86-0001, issued by the Department of Health and Human Services (HHS), was restrictive.

We dismissed the protest as untimely because it was not filed with our Office within 10 working days following initial adverse agency action on a protest filed with HHS. Our action was in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which provide that, when a protest has first been filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester knew or should have known of initial adverse agency action on its protest to the agency.

We affirm the dismissal.

The record shows that Milwaukee initially filed a protest against the solicitation specification with the contracting agency on August 19, 1985, and that the contracting officer denied the protest by letter of August 21. Milwaukee then requested that the contracting officer reconsider its protest, and, on September 18, it filed its protest with this Office. Since Milwaukee's

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protest to our Office was not filed until September 18, almost 1 month after the initial adverse agency action on its protest to HHS, we dismissed it as untimely under section 21.2(a)(3), supra.

In its request for reconsideration, Milwaukee asks that we waive our timeliness rules here because it was not familiar with our procedures and it consequently followed the advice of its congressman in pursuing its protests to the agency and our Office. Our regulations do provide for consideration of protests that are not timely filed when a significant issue is raised or "for good cause." See 4 C.F.R. § 21.2(c). This protest does not, in our judgment, raise a significant issue, and the good cause exception is reserved for circumstances where some compelling reason beyond the protester's control prevented the filing of a timely protest. Vycor Corp. et al., B-212687 et al., Feb. 15, 1984, 84-1 C.P.D. ¶ 205. That is not the situation here. The protester simply did not meet its responsibility to assure that the timeliness requirements were met. In this connection, we point out that, since our regulations are published in the Federal Register (see 49 Fed. Reg. 49,417 (1984)), protesters are charged with constructive notice of their contents, and, therefore, a protester's professed unawareness of these published regulations is not a proper basis for waiving their requirements. Agha Construction-- Reconsideration, B-218741.3, June 10, 1985, 85-1 C.P.D. ¶ 662.

for *Raymond J. Van*
Harry R. Van Cleve
General Counsel