



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Farinelli Construction Inc.--Request for  
Reconsideration

**File:** B-234636.2

**Date:** March 29, 1989

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### DIGEST

Protest filed with the General Accounting Office (GAO) more than 10 working days after notice of initial adverse agency action on protester's initial protest to the procuring agency is untimely and will not be considered under "good cause" exception to timeliness rules where no compelling reason beyond the protester's control prevented the protester from filing the protest with GAO.

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### DECISION

Farinelli Construction Inc. requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. DLA140-88-R-0024, issued by the Defense Logistics Agency (DLA) for renovation of nine smoking rooms. Farinelli challenged DLA's decision to cancel the invitation for bids (IFB) originally issued and complete the procurement through negotiation. We dismissed the protest because we found that it was untimely filed. We affirm our prior dismissal.

The solicitation was initially issued as an IFB on June 27, 1988. After bid opening, however, DLA determined that all the bids were unreasonable in price, and on September 12, canceled the IFB and reissued the solicitation as an RFP. Farinelli initially submitted an agency-level protest challenging the agency's actions on October 4. By letter of November 1, which Farinelli received on November 5, DLA denied the protest. Subsequently, on January 10, 1989, Farinelli responded to DLA's letter by asking DLA how to file an appeal with the Armed Services Board of Contract Appeals (ASBCA). Farinelli also requested certain information pursuant to the Freedom of Information Act (FOIA). DLA responded on January 31, informing Farinelli of the FOIA procedures and the regulations governing ASBCA appeals.

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On February 28, Farinelli filed a protest with our Office challenging DLA's decision to cancel the IFB and use negotiated procedures to complete the procurement. We dismissed the protest as untimely because it was not filed with our Office within 10 working days after November 5, the date Farinelli received notice of the initial adverse agency action on its agency-level protest. See 4 C.F.R. § 21.2(a)(3) (1988).

On reconsideration, Farinelli argues that we should consider the untimely protest pursuant to the "good cause" exception to our timeliness rules contained at 4 C.F.R. § 21.2(b), because DLA's letter dated January 31 advised Farinelli to contact the ASBCA for information on its procedures; 1/ DLA never informed Farinelli that an award under the RFP had been made to another firm; and Farinelli never received the information it requested under FOIA on January 10.

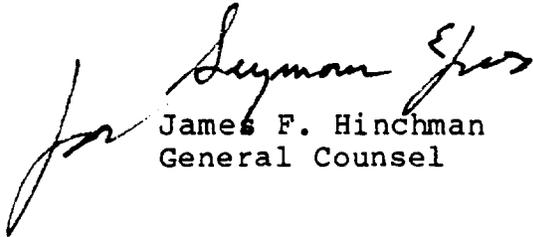
The good cause exception to our timeliness rules is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from submitting a timely protest. 4 C.F.R. § 21.2(b); Inter-Controls, Inc.-- Request for Reconsideration, B-228573.3, Mar. 2, 1988, 88-1 CPD ¶ 216. Here, it is clear from the record that Farinelli knew the basis of its protest, the cancellation and resolicitation of the procurement, by October 4, 1988, when it filed its protest with DLA. None of the reasons presented by Farinelli for invoking the good cause exception indicates that Farinelli was prevented in any way from filing a timely protest with our Office after it received DLA's denial of the agency-level protest. On the contrary, Farinelli has

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1/ Contrary to Farinelli's contention, DLA's letter did not state that the firm should contact the ASBCA to file an appeal of DLA's decision. Rather, DLA specifically stated that it was not permitted to advise Farinelli how to file an appeal with the ASBCA, and instead recommended that the firm consult the Federal Acquisition Regulation Part 33 for guidance.

not explained why it waited more than 2 months after receiving DLA's denial of the protest to request additional information from DLA. Under these circumstances there is no basis for us to consider the protest pursuant to the "good cause" exception.

The dismissal is affirmed.

for  
James F. Hinchman  
General Counsel