

Cunningham



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Right Temporaries, Inc.--Reconsideration

**File:** B-239006.3

**Date:** July 24, 1990

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Ernest J. Langenhennig, for the protester.  
James M. Cunningham, Esq., and John F. Mitchell, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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## DIGEST

General Accounting Office (GAO) affirms its dismissal of a protest which was untimely because it was filed more than 10 working days after protester received a letter from the contracting agency which gave the precise reasons giving rise to the basis of the protest. Moreover, even assuming an earlier letter from the protester to GAO should be considered a protest, as argued by the protester, the protest is still untimely as the earlier letter was also received more than 10 working days after the date the basis of protest was known.

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## DECISION

Right Temporaries, Inc. (RT) requests reconsideration of our April 3, 1990, dismissal of its March 29 letter of protest against the decision of the National Finance Center (NFC), Department of Agriculture, to permit withdrawal, but not correction, of the company's mistaken bid under the NFC's invitation for bids (IFB) No. NFC-89-B-18, issued for temporary employee services. We dismissed the protest, received at our Office on April 2, as untimely filed under section 21.2(a)(2) of our Bid Protest Regulations (4 C.F.R. Part 21 (1990)) because the protest was filed more than 10 working days after the protester admittedly knew of its basis of protest, specifically, February 23, when RT received an NFC letter, dated February 15, which informed RT of the NFC's reasons for its decision.

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The only argument RT advances in support of its reconsideration request does not concern its admittedly untimely March 29 letter of protest but, rather, an earlier March 9 RT letter which we received on March 27. RT argues that this March 9 letter constituted its initial protest and that this protest must have been timely received at our Office had we timely and properly acknowledged its receipt.

We affirm our dismissal.

The 10-day timeliness rule contained in our Bid Protest Regulations is intended to provide a reasonable period of time within which protests may be filed yet requires protests to be raised as early as practicable. This is because, should we decide that the protest has merit, corrective action may be more feasible and can be taken with the least disruption to the procurement process and potential prejudice to other bidders. Here, for the reasons discussed below we find that RT's protest was properly dismissed as untimely because it knew of the basis for the protest on February 23, but did not file with us within 10 working days thereafter.

RT's March 9 letter cannot be considered to have constituted a timely protest under our Regulations for two reasons. First, the letter evidenced only an intent to file a future protest on unspecified grounds. The company stated only that it "wished to protest the [NFC] award under the [IFB]" and requested that it be sent "forms or instructions that are needed to make the protest . . . to prevent any loss of protest rights." Our Office subsequently complied with RT's March 9 request, and we thereafter received RT's March 29 letter of protest which contained, for the first time, a statement of RT's basis of protest and a request that the "entire bid be set aside." See our Regulations, above, at sections 21.1(c)(4) and (6), which require, respectively, that a protest "set forth a detailed statement of the legal and factual grounds of protest" and "state the form of relief requested." Consequently, RT's only protest must be considered to have been made in its March 29 letter.

Second, even if we assume, for the purpose of discussion, that RT's March 9 letter constituted its initial protest, this letter also would have had to have been received at our Office on March 9 to have constituted a timely protest under section 21.2(a)(2) of our Regulations, since March 9 was the 10th working day after February 23.

Instead of a receipt date of March 9, however, our time-date stamp on the letter shows a receipt date of March 27. Consequently, we must accept March 27 as the date of receipt of RT's March 9 letter in the absence of probative evidence to show actual earlier receipt. Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245.

RT argues that its March 9 letter to our Office should have been considered timely filed at our Office on March 9 because the letter, which was sent certified mail, return receipt requested, was allegedly mailed from New Orleans, Louisiana, on March 9. It is when we receive a protest letter, however, not when it is mailed, which governs timeliness under our Regulations. Custom Programmers Inc., B-235716, supra. In addition, contrary to the protester's recollection, the envelope which enclosed RT's March 9 letter contains a postmark, imprinted in New Orleans, of March 20, or 11 days later than the letter is dated. We think this is a more reasonable explanation for our receipt of the letter on March 27 than RT's speculation, based on a New Orleans postal employee's comment, that its letter had been returned to the post office because we had no one available to receive it.<sup>1/</sup>

RT's arguments do not constitute probative evidence that we actually received RT's letter by the close of business on March 9. Given that the March 9 letter would have had to have been received at our Office in Washington, D.C., by the close of business on that same date--a thoroughly improbable assumption given the method of mailing, and when and where the letter was postmarked--we reject RT's argument that its March 9 letter should be considered to have been timely filed as of that date. Since the protester has presented no information establishing that our prior dismissal of the protest was erroneous, it is affirmed. See 4 C.F.R. § 21.12(a).



*for*  
James F. Hinchman  
General Counsel

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<sup>1/</sup> According to RT, the postal employee commented that "often attempts are made by a carrier to deliver certified mail, but no one is there to accept it" and that "often [a] letter is returned to the post office where it sits for someone to claim it for another 15 days."