



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: National General Supply, Inc.--Reconsideration

File: B-239647.2

Date: July 6, 1990

Andrew Marshall, for the protester.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO participated in the preparation of
this decision.

DIGEST

Prior dismissal of protest as untimely is affirmed where
protest to the General Accounting Office was filed more than
10 working days after protester was notified of agency's
denial of protester's initial protest to the procuring
agency.

DECISION

National General Supply, Inc. requests reconsideration of
our dismissal as untimely of its protest concerning request
for proposals (RFP) No. F64133-89-R-0005, issued by the
Department of the Air Force for a supply store.

We affirm the dismissal.

By letter received in our Office on May 11, National
protested that the Air Force improperly rejected as late the
proposal National submitted in response to the RFP. In that
letter, and in its reconsideration request, National argues
that it relied on the contracting officer's oral permission
to facsimile (fax) pertinent parts of its proposal, which
were timely received, although the RFP did not contain a
provision allowing for submission of faxed proposals.
National's submission indicated that the contracting officer
notified National by telephone on April 10 that its hard
copy offer was submitted late and therefore its offer would
not be considered. National filed an agency-level protest
with the Air Force by letter dated April 11, objecting to
the rejection of its offer. National's submission further
showed that as of April 24, National knew that its agency-
level protest had been denied by the Air Force.

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When a protest is filed initially with the contracting agency, any subsequent protest to our Office must be received within 10 working days of the protester's notice of the initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1990). A protest is considered filed when it is received by our Office. 4 C.F.R. § 21.0(g). We dismissed National's protest as untimely because we did not receive it until May 11, more than 10 working days after National was aware that the Air Force had rejected the firm's agency-level protest.

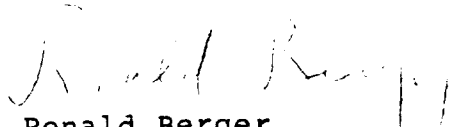
In its request for reconsideration, National does not dispute our finding that its protest was untimely. Instead, it argues again the merits of its protest, emphasizing its position that it relied on a government official's advice in submitting portions of its offer by fax machine.

Our timeliness rules reflect the dual requirement of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Grant Technical Servs., B-235231.2, May 26, 1989, 89-1 CPD ¶ 514. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. The only exceptions to the timeliness requirements are where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or a significant issue (one of widespread interest to the procurement community or one that has not been considered before) is involved. See 4 C.F.R. § 21.2(b); Hunter Env'tl. Servs., Inc., B-232359, Sept. 15, 1988, 88-2 CPD ¶ 251.

As stated above, National in its reconsideration request does not dispute our conclusion that its protest to our Office was untimely. It also has offered no explanation as to why it failed to protest the rejection of its offer within 10 working days of the April 25 notification. Thus, the protester provides no compelling reason beyond its control which prevented it from timely filing its protest. Further, while we recognize the importance of the matter to the protester, we do not think the protest raises a significant issue--it does not involve an issue which is of widespread interest to the procurement community, and the issue of an offeror's reliance on oral advice given by

government officials is one we have dealt with often. See, e.g., Metro Recycling Co.--Request for Recon., B-233816.2, Mar. 2, 1989, 89-1 CPD ¶ 225; Oscar Vision Sys. Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450.

Our prior dismissal is affirmed.



Ronald Berger
Associate General Counsel