

11/11/1990



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Harley-Davidson, Inc.--Reconsideration

**File:** B-238436.5

**Date:** August 31, 1990

William E. Hughes III, Esq., Whyte & Hirschhoeck, S.C., for the protester.  
John P. Carey, Esq., Paul, Hastings, Janofsky & Walker, for Hayes Diversified Technologies, Inc., an interested party.  
W.D. Durrett, Jr., Esq., United States Marine Corps, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Request for reconsideration of decision dismissing protest as untimely is denied where protest of responsiveness of awardee's bid was not filed within 10 working days of when the protester was reasonably apprised of the agency's position that the awardee's bid was responsive.

## DECISION

Harley-Davidson, Inc. requests that we reconsider our decision in Harley-Davidson, Inc., B-238436.3, June 4, 1990, 90-1 CPD ¶ 528, in which we dismissed as untimely Harley-Davidson's protest challenging the responsiveness of Hayes' Diversified Technology, Inc.'s bid under invitation for bids (IFB) No. M67854-89-B-0035, issued by the United States Marine Corps for motorcycles.

We deny the request for reconsideration.

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Bid opening occurred on February 7, 1990, and the Corps received the following bids:

Ft. Walton Yamaha	\$1,513,052.40
Hayes	\$1,637,414.70
NOSA, Inc.	\$2,077,080.00
Armstrong Motorcycles Limited	\$2,710,010.00
Harley-Davidson	\$2,776,295.30

The Corps proposed award to Hayes as the only responsive bidder.

On January 29, 1990, before bid opening, Armstrong filed its first protest with our Office (B-238436) contesting the alleged restrictiveness of the IFB requirement that bidders furnish Environmental Protection Agency air emissions certificates of conformity with their bids. After bid opening on March 20, Armstrong filed a second protest (B-238436.2), challenging the responsiveness of Hayes' bid and the agency's determination that Armstrong's bid was nonresponsive. We denied both of Armstrong's protests in our decision in Armstrong Motorcycles Ltd., B-238436; B-238436.2, June 5, 1990, 90-1 CPD ¶ 531.

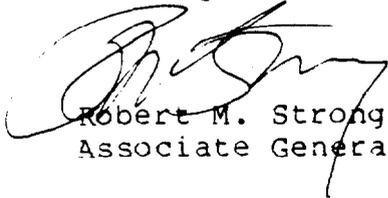
On May 16, Harley-Davidson also filed a protest challenging the responsiveness of Hayes' bid. We dismissed Harley-Davidson's protest because we found that Harley-Davidson had not protested this matter within 10 days of the date on which it knew the basis of its protest. See 4 C.F.R. § 21.2(a)(2) (1990). Specifically, we found that on April 26 Harley-Davidson had received a copy of the Corps' report on Armstrong's second protest that informed Harley-Davidson that the agency had found Hayes' bid to be responsive.

On reconsideration, Harley-Davidson argues that the agency's report on Armstrong's second protest did not specifically state that the Corps had determined Hayes' bid to be responsive. Harley-Davidson states that it was the agency's report on the first protest, dated March 7, in which the agency stated that it found Hayes' bid to be responsive, and that it did not receive a copy of this report until May 2. Harley-Davidson therefore contends that its protest, filed within 10 working days of May 2, is timely.

The record does not indicate precisely when Harley-Davidson received the agency's March 7 report on the first protest in which the agency unequivocally stated that Hayes' bid was responsive. Also it is true that the agency's report on

Armstrong's second protest did not explicitly state that the agency found only Hayes' bid to be responsive. However, the only reasonable reading of that report indicates the agency found that Hayes' bid was responsive since that report extensively defends the responsiveness of Hayes' bid. Accordingly, Harley-Davidson should have known from the later report that the agency had found Hayes' bid responsive. Since Harley-Davidson's protest was not filed within 10 working days of its receipt of the agency's report on Armstrong's second protest, it is untimely.

The request for reconsideration is denied.



Robert M. Strong  
Associate General Counsel