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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Kenneth W. Ware--Reconsideration  
**File:** B-241170.2  
**Date:** April 23, 1991

Donald W. Bond, Esq., for the protester.  
Karen L. Turner, and John G. Brosnan, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

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

### DECISION

Kenneth W. Ware requests reconsideration of our dismissal as  
untimely of its protest concerning invitation for bids (IFB)  
No. SCS-11-MS-90, issued by the Soil Conservation Service,  
Department of Agriculture, for the installation of pipe drop  
structures and rock riprap stabilization sites. Ware's  
initial protest challenged the contracting officer's  
correction of an error included in the awardee's bid. The  
contracting officer denied the protest by letter dated  
August 27, 1990, which Ware received on August 28. Ware filed  
a protest with our Office on September 17.

We dismissed Ware's protest in accordance with our Bid Protest  
Regulations, which provide that when a protest has been  
initially filed with the contracting agency, subsequent  
protests to our Office must be filed within 10 working days  
of the protester's actual or constructive knowledge of adverse  
agency action in order to be considered timely. 4 C.F.R.  
§ 21.2(a)(3) (1990). Ware's protest was filed in our Office  
on September 17, 13 working days after notification of the  
contracting officer's decision to deny the protest and was  
therefore dismissed as untimely.

Ware argues that the protest should be considered as timely  
because the contracting agency received a copy of the protest  
letter on September 11. Ware states that this should be  
considered as notice to the government of the protest within  
the 10-working-day requirement. The protester also believes

that since it mailed the protest in sufficient time for it to be timely filed, it would be unjust for our Office to dismiss the protest as untimely. Finally, Ware indicates that before the protest was filed, he contacted the contracting officer to obtain the name and mailing address of the agency that would consider his protest. The contracting officer forwarded the requested information but only after "some number of days" and he did not state that agency receipt after 10 working days would prevent further appeal.

First, an agency's receipt within the 10-day period of a copy of a protest to our Office that we do not receive until after the filing period expires, does not serve to make the protest timely. The timeliness of a protest is measured by when we receive the filing. Bid Protest Regulations, 4 C.F.R. § 21.0(g); GTE Telecom Inc.--Recon., B-222459.4, May 14, 1987, 87-1 CPD ¶ 505.

Next, to determine when a protest was filed, we rely upon our time-date stamp, unless there is other evidence to show actual earlier receipt. Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245. Thus, neither the fact that the protest was mailed nor the date it was mailed is relevant to timeliness; a protester makes use of the mail at its own risk, and a delay in the mail does not serve as a basis for waiving our Regulations and considering an untimely protest. Custom Programmers Inc., B-235716, *supra*. Further, while it is unfortunate that the contracting officer did not immediately provide the protester with the information sought, the timeliness requirements of our Regulations may not be waived by actions of the contracting agency. Air Cleaning Specialists, Inc.--Recon., B-236936.2, Nov. 3, 1989, 89-2 CPD ¶ 422. Our timeliness standards are strictly applied and exist to permit resolution of contract award disputes without undue interruption to the procurement process. The regulations are published in the Federal Register and protesters are charged with constructive knowledge of their content. Thus, a protester's lack of actual knowledge of our filing requirements or address will not convert an untimely protest to a timely one. Thompson Sign Co.--Recon., B-239453.2, July 5, 1990, 90-2 CPD ¶ 13.

Our prior dismissal is affirmed.

  
for James F. Hinchman  
General Counsel