



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-235477.4

October 6, 1989

Mr. William A. Fischer, President  
Mountain Technical Industries  
2161 South Platte River Drive  
Denver, CO 80223

Dear Mr. Fischer:

This refers to your June 23, 1989, letter concerning our decisions on the bid protest and request for reconsideration Mountain Technical Industries filed in our Office protesting that the Department of the Air Force, McClellan Air Force Base, California, acted in bad faith in canceling a request for proposals (RFP) for microfilm viewers. Mountain Technical Industries, B-235477, May 17, 1989, 89-1 CPD ¶ 476, aff'd, June 7, 1989, 89-1 CPD ¶ 533. We dismissed your protest as untimely because it was not filed in our Office within 10 working days following initial adverse agency action, see 4 C.F.R. § 21.2(a)(3) (1989), and denied your request for reconsideration because our time/date stamp established the time of delivery to the General Accounting Office (GAO) Document Control Section as beyond the 10 working day period.

In your letter, you first note that you received improper instructions from a GAO employee as to where a bid protest should be addressed, and that the GAO did not comply with its own published definition of the term "filed" in dismissing your protest.

As we stated in our reconsideration decision, there is no evidence in the record that the late receipt of your protest was due to its being misdelivered as a result of being incorrectly addressed to our Claims Division, since all mail is time/date stamped, regardless of which division it is addressed to, upon arrival in the GAO Document Control Section. Moreover, as we stated in our original decision, under our Bid Protest Regulations, the term "filed" is defined as receipt of a protest in our Office. 4 C.F.R. § 21.0(g). Because all incoming mail is first delivered to the Document Control Section and time/date stamped at that time and location, our time/date stamp is regarded as evidence of the time of filing, absent affirmative evidence to the contrary to show earlier receipt.

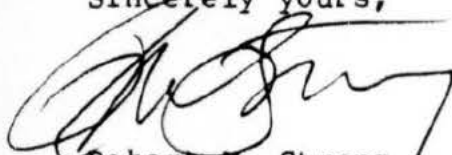
Secondly, you assert that your untimely protest warrants GAO's consideration under either the good cause or the significant issue exceptions to our timeliness rules. You argue that the time it took for your protest to reach our Document Control Section is beyond your control, and that you have conducted test mailings which showed that it takes from 6 to 12 days for a letter from Denver to reach the GAO. You also assert that your claim that the Air Force acted in bad faith raises a significant issue of widespread interest.

GAO's timeliness rules reflect the dual requirements 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 these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id. The only exceptions 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 where a significant issue (one of widespread interest to the procurement community that has not been considered before) is involved. See 4 C.F.R. § 21.2(b).

Neither is the case here. You have not shown a compelling reason beyond your control which prevented your filing a timely protest. You merely assert that the mail from Denver to GAO takes a longer time than you anticipated. In addition, you have not shown that the issue of whether the Air Force acted in bad faith in canceling an RFP for microfilm viewers at McClellan Air Force Base is of widespread interest to the procurement community. On the contrary, the record demonstrates that the Air Force simply canceled the RFP because of a decision to replace film with digital data, rendering the acquisition of microfilm viewers unnecessary.

We see no basis for further consideration of this matter.

Sincerely yours,



Robert M. Strong  
Associate General Counsel