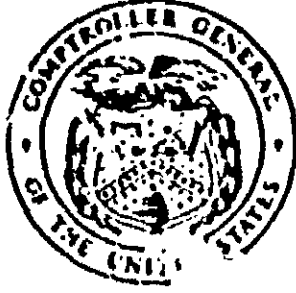


01239

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-186124

DATE: October 22, 1976

MATTER OF: Lemmon Pharmacal Company--Request for Reconsideration

DIGEST:


Request for reconsideration of decision is untimely and not for consideration since filed later than 10 working days after basis for reconsideration was known.

By request filed October 7, 1976, Lemmon Pharmacal Company (Lemmon) seeks reconsideration of our decision, Lemmon Pharmacal Company, B-186124, August 2, 1976, 76-2 CPD 110, which denied its protest concerning the Defense Personnel Support Center's proposed award to CIBA Pharmaceutical Corporation of a requirements contract for hydralazine hydrochloride tablets. Lemmon contends that the Buy American Act was improperly applied to its bid, and that proper application would result in its protest being sustained.

Our Bid Protest Procedures, specifically 4 C.F.R. § 20.9(b) (1976), state that:

"(b) Request for reconsideration of a decision of the Comptroller General shall be filed not later than 10 working days after the basis for reconsideration is known or should have been known, whichever is earlier. The term 'filed' as used in this section means receipt in the General Accounting Office."

Since the basis for the request for reconsideration was known by Lemmon upon its receipt of our August 2, 1976 decision and since Lemmon's request for reconsideration was filed more than 10 working days after receipt of the decision, the request must be denied as untimely.

Deputy 
Comptroller General
of the United States

598-01239

B-Supplies
Proc II.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-186124

DATE: December 3, 1976

MATTER OF: Lemmon Pharmacal Company, Inc.

DIGEST:

Even if protester was inadvertently lulled into believing that formal written request for reconsideration of GAO decision could be delayed, protester must be charged with constructive notice of bid protest procedures published in Federal Register and delay of 2 months in filing request is not justified and is inconsistent with procedural requirement for prompt resolution of such matters. Moreover, novelty of issue considered in initial GAO decision is no justification for such delay.

Lemmon Pharmacal Company (Lemmon) seeks reconsideration of our decision in Lemmon Pharmacal Company, B-186124, October 22, 1976, 76-2 CPD 358, dismissing as untimely Lemmon's request for reconsideration of our earlier decision in Lemmon Pharmacal Company, B-186124, August 2, 1976, 76-2 CPD 110. The latter case denied the substance of Lemmon's protest to the Defense Personnel Support Center's proposed award to CIBA Pharmaceutical Corporation of a requirements contract for hydralazine hydrochloride tablets.

Lemmon argues that this Office should not have disposed of its request for reconsideration on the technical grounds of untimeliness because the substance of its protest involves a novel aspect of the Buy American Act which was first considered by this Office in the decision of August 2, 1976. In addition, Lemmon states that its corporate counsel and secretary communicated orally with the responsible attorney in this Office within the 10-day limitation in 4 C.F.R. § 20.9 (1976) for requesting reconsideration of the August 2 decision. While the protester admits that such communication is not a "filing" under that section, it states that our informal and cooperative attitude led the protester to believe that its informal, oral discussion of the initial decision did not require an immediate filing of a formal request for reconsideration.

Initially, it should be noted that this Office cannot assume the responsibility for insuring that protesters comply with

B-186124

procedural requirements for filing bid protests or requests for reconsideration. Our Bid Protest Procedures have been published in the Federal Register (40 Fed. Reg. 17979 (1975)) and protesters must be charged with constructive notice of their provisions. Dewitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47. In addition, a copy of our procedures was furnished to Lemmon when this Office acknowledged receipt of the firm's initial protest to this Office. Even if Lemmon was inadvertently lulled into believing that a formal written request for reconsideration could be delayed, we neither gave express prior approval of nor does sufficient justification exist for the 2-month delay in filing its request for reconsideration. In this connection, 4 C.F.R. § 20.9(c) expressly states that a request for reconsideration shall be subject to the bid protest procedures "consistent with the need for prompt resolution of the matter." The novelty of the issue decided in the initial decision is no justification for the 2-month delay, particularly in view of the exhaustive arguments filed in the course of our initial consideration of the protest.

Accordingly, we affirm our dismissal of protester's request for reconsideration on the basis that the request was untimely filed.


Deputy Comptroller General
of the United States