

DOCUMENT RESUME

02653 - [A1672658]

[Request for Reconsideration of Decision Relating to Nonappropriated Fund Activities]. B-187606. June 7, 1977. 2 pp.

Decision re: Data Terminal Systems; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense -

Procurement & Contracts (058).

Organization Concerned: Department of the Army.

Authority: 4 C.F.R. 20.9(b). B-177450 (1977).

Company requested reconsideration of a decision which dismissed its protest because of the lack of settlement authority on the part of GAO over nonappropriated fund activities. The request for reconsideration was untimely since it was filed more than 10 days after the grounds for the request should have been apparent. The commissary's temporary use of Army appropriations pending reimbursement did not alter the essentially nonappropriated nature of the commissary's procurement. (Author/SC)

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DECISION

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

FILE: B-187606

DATE: June 7, 1977

MATTER OF: Data Terminal Systems--Request for Reconsideration

DIGEST:

1. Request for Reconsideration filed more than 10 days after the grounds for the request should have been apparent is untimely under section 20.9(b) of GAO's Bid Protest Procedures. However, prior decision is clarified.
2. Commissary's temporary use of Army appropriations pending reimbursement does not alter the essentially nonappropriated nature of commissary procurement. Dismissal of protest is affirmed.

By letter dated April 22, 1977, Data Terminal Systems (Data), requests reconsideration of our decision Data Terminal Systems, B-187606, February 2, 1977, 77-1 CPD 35, in which we declined to render a decision on Data's protest because of our lack of settlement authority over nonappropriated fund activities. Data claims the dismissal of its protest was in error because of its belief that appropriated funds were used in this procurement of commissary equipment.

Under our Bid Protest Procedures, 4 C.F.R. § 20.9(b) (1976), requests for reconsideration must be "filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier." Data should have known the grounds for its request for reconsideration upon its receipt of our February 2, 1977 decision. In the normal course of the mails we would anticipate that Data would have received our decision no later than February 7, 1977. Since Data's request for reconsideration was not filed until April 25, 1977, it is untimely. Nevertheless, we believe a clarification of our prior decision is in order.

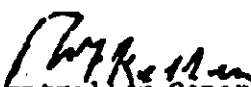
In our earlier decision, we referred to the commissary as a "nonappropriated fund activity." We are advised by the Army that although the delivery order for the items which were purchased cited

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1976 Operation and Maintenance, Army (OMA) appropriated funds, the OMA appropriations account from which the funds were expended was subsequently reimbursed from the Trust Revolving Fund Account which is made up of commissary surcharge funds paid by commissary patrons. The surcharge consists of a percentage of the sales price of goods and services sold in commissary store facilities. We have been advised by the Army that the appropriated funds were usually reimbursed approximately thirty days after delivery of the items or services procured.

It is our opinion that the temporary use of Army appropriations pending reimbursement does not alter the essentially nonappropriated nature of the funds used to finance the contract. Consolidated Diesel Electric Company, B-177450, January 6, 1977, 77-1 CPD 7.

Accordingly, the prior dismissal of the protest is affirmed.


Deputy Comptroller General
of the United States