

DOCUMENT RESUME

03643 - [A2713914]

[Reconsideration of Dismissal of Untimely Protest]. B-189110.
September 22, 1977. 2 pp.

Decision re: Corley Mechanical Contractor; by Robert F. Keller,
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel; Procurement Law I.
Budget Function: General Government: Other General Government
(806).

Organization Concerned: Department of the Army: Corps of
Engineers, Omaha, NE.

Authority: 4 C.F.R. 20.2(b)(2). 53 Comp. Gen. 533. 52 Comp. Gen.
20. 52 Comp. Gen. 23. B-186719 (1976). B-184922 (1975).
E-185126 (1975). E-189607 (1977). B-187183 (1977). B-187639
(1977).

Counsel for the protester requested reconsideration of a decision which dismissed as untimely its protest against rejection of the firm's bid. The prior decision dismissing the protest was affirmed because the procuring activity was not required to inform the protester of the CAO 10-day filing limitation, consultation with counsel was not a valid basis to extend the filing time for the protest, and the circumstances of the protest did not otherwise constitute a compelling reason requisite to showing of "good cause" for GAO consideration of an untimely protest. (Author/SC)

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DECISION



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

FILE: B-189110

DATE: September 22, 1977

MATTER OF: Corley Mechanical Contractor - Reconsideration

DIGEST:

Prior decision dismissing protest as untimely is affirmed. Procuring activity is not required to inform protester of GAO 10-day filing limitation, consultation with counsel is not valid basis to extend filing time for protest, and circumstances of protest do not otherwise constitute compelling reason requisite to showing of "good cause" for GAO consideration of untimely protest.

Counsel for Corley Mechanical Contractor (Corley) has requested reconsideration of our decision in Corley Mechanical Contractor, B-189110, August 4, 1977, dismissing as untimely its protest against rejection of the firm's bid for Fuel Conversion Project 170.10 at Fort Leonard Wood, Missouri, in response to invitation for bids (IFB) No. DACA45-77-B-0024, issued by the Department of the Army (Army), Corps of Engineers, Omaha District.

The IFB was issued on February 3, 1977, with bid opening on March 31, 1977. Corley, the apparent low bidder, was telephonically informed on April 29, 1977, of the Army's decision (1) to reject Corley's bid as "unconscionably low," and (2) to reject all bids due to lack of currently available funds to award a contract in the amount of the next low bid. Because counsel's letter of protest, sent by registered mail on May 16, 1977, was received by our Office on May 17, 1977, we viewed the protest as untimely in accordance with section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(2) (1977), which requires that:

"* * * bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

Counsel now contends that Corley was not advised of the 10-day filing requirement, that failure to consider the protest on the merits is arbitrary and capricious because counsel could not file the protest until documentation was provided, and that due to the extenuating circumstances and in the interest of the taxpayers the time limitation should be waived.

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Initially, the Army was not required to notify Corley that the firm had 10 working days within which to protest the agency's decisions to our Office. Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256; Save Our Aerospace Program, Inc., B-184922, November 12, 1975, 75-2 CPD 299. Since the publication of our Bid Protest Procedures in the Federal Register, we have consistently held that protesters are charged with constructive notice of their provisions, including time limitations. DeWitt Transfer and Storage Company, 53 Comp. Gen. 533, 534 (1974), 74-1 CPD 47; Twyco, Inc.--Request for reconsideration, B-185126, December 23, 1975, 75-2 CPD 408; Aardvark Drayage Co., B-189607, August 24, 1977.

Our Bid Protest Procedures do permit consideration of untimely protests where good cause is shown. 4 C.F.R. § 20.2(c) (1977). Although "good cause" varies with the circumstances of the protest in question, it generally refers to some compelling reason beyond the protester's control which has prevented timely filing of the protest. 52 Comp. Gen. 20, 23 (1972); Power Conversion, Inc., supra; R. A. Miller Industries, Inc., (Reconsideration), B-187183, January 14, 1977, 77-1 CPD 32. We do not, however, regard Corley's consultation with counsel as being a valid basis or "compelling reason" requisite to a showing of "good cause" for extending the filing period required by our procedures. The Public Institute of the Center for Naval Analysis of the University of Rochester, B-187179, August 15, 1977; Power Conversion Inc., supra. Furthermore, we believe Corley was sufficiently informed of the reasons for rejection of its bid and cancellation of the IFB in the April 29 telephone call to have filed its protest without the benefit of documentation.

In view of the foregoing, our prior decision is affirmed.


Deputy Comptroller General
of the United States