

**DECISION**



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

12942

PL 1  
Mr. Harpacher

*[Protest of Bid Rejection For Failure to Acknowledge Amendment]*

FILE: B-196959

DATE: February 26, 1980

MATTER OF: Garrison Construction Company, Inc.

**DIGEST:**

1. Protest is not for consideration where time period between receipt by protester of contracting activity's denial of protest and receipt by our Office of subsequent protest is more than 10 working days provided for in Bid Protest Procedures.
2. Issues considered in previous decisions of our Office are not "significant" issues within meaning of that exception to our timeliness rules.
3. Timeliness rules and enumerated exceptions are for strict application and fact that none of parties might be prejudiced by waiver of rules has no effect on application.

3978 The Garrison Construction Company, Inc. (Garrison), protests the contract award to a company other than itself by the United States Forest Service (Mendocino National Forest) under invitation for bids No. R5-80-01. The Garrison bid was rejected because Garrison had failed to acknowledge the receipt of amendment No. 01 to the invitation. Garrison protested the rejection of its bid to the agency on the bases that it never received the amendment, that its representative was informed by Government personnel--erroneously--prior to depositing its bid for bid opening that no amendments had been issued under the invitation, and that the amendment had no more than a trivial or insignificant effect on price, quantity, quality, or delivery.

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By letter of November 5, 1979, the contracting officer denied the protest by stating that the first two bases of protest could have no effect on the issue of bid responsiveness and that due to the increased amount of timber requiring special treatment under the amendment the Garrison failure to acknowledge the amendment could not be waived since the amendment changes had other than a trivial/insignificant effect on price. With regard to the first two bases of protest, the contracting officer's letter advised Garrison that the amendment had been mailed to all bidders sent the solicitation. Further, the erroneous advice that no amendments had been issued resulted from a clerk's reliance on the bid board, which showed no amendments, rather than reviewing the bid documents. He advised, however, that corrective action would be taken to prevent a recurrence of this problem. The November 5 letter concluded with the following information:

"This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with the Bid Protest Procedures of the General Accounting Office (4 CFR Part 20)."

The contracting officer's November 5 letter was sent to Garrison by certified mail, return receipt requested. The return receipt indicates that an employee of Garrison signed the receipt on November 8. Garrison's subsequent protest mailgram setting forth the same reasons as above was received by our Office on November 28.

Garrison argues that its protest is timely inasmuch as the number of working days between the November 8 receipt date of the agency denial and the date the protest was mailed to our Office, taking into account the two Federal holidays falling between those dates, is not more than the 10 working days allowed. Alternatively, Garrison contends that the merits of the protest should nonetheless be considered because the question presented is of significant interest to the construction industry and presents a fact situation which is unusual in nature and needs to be resolved

for future projects should similar situations occur. Further, since work under the contract will not commence until April or May 1980, it is believed that any waiver of the timeliness issue and consideration of the protest merits will not prejudice the awardee of that contract.

It is provided in our Bid Protest Procedures, specifically at 4 C.F.R. § 20.2(a), that a party must file its protest with our Office within 10 working days after it has learned of the initial adverse action of the contracting activity on its protest before that activity. It is further provided at 4 C.F.R. § 20.2(b)(3) that the term "filed" means "receipt in the contracting agency or in the General Accounting Office as the case may be." Consequently, to be timely Garrison's protest was required to be filed in our Office by November 26 (the date upon which Garrison states it sent its mailgram protest to our Office). Since we received the Garrison mailgram protest on November 28, we find that the Garrison protest was not timely filed with our Office.

As regards the question of the significant issue exception to the timeliness rules, 4 C.F.R. § 20.2(c) (1979), this exception is applied sparingly so that the timeliness rules do not become meaningless. Where the merits of a protest involve issues which have been considered in previous decisions issued by our Office, which is the case here, such issues are not considered "significant" within the meaning of the provision in the Bid Protest Procedures. Technical Services Corporation, et al., B-190945, B-190970, B-190992, August 25, 1978, 78-2 CPD 145; Mueller & Wilson, Inc., B-193008, March 7, 1979, 79-1 CPD 156.

Neither does the fact that none of the parties to this matter will allegedly be prejudiced provide a basis for waiver of our timeliness rules and consideration of the protest on the merits. Our timeliness rules and the exceptions enumerated therein are for strict application. Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256.

Accordingly, the protest is dismissed.

*for* *Harry R. Jan Clave*  
Milton J. Socolar  
General Counsel