

Mr. Hasparker

19/8560

**DECISION**



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

FILE: B-202901.2

DATE: August 17, 1981

MATTER OF: Domar Buckle Mfg. Corp.--Reconsideration

**DIGEST:**

Delay in mail does not constitute good cause basis under Bid Protest Procedures to consider untimely protest on merits. Once protest arrives late, any delay that may have occurred after the receipt is immaterial. Untimely protest against correction of mistake in bid based on bidder's worksheets does not present significant issue for consideration under Bid Protest Procedures; such issue has been treated on merits previously.

Domar Buckle Mfg. Corp. (Domar) requests reconsideration of our decision in Domar Buckle Mfg. Corp., B-202901, May 21, 1981, 81-1 CPD 401. In that decision, we held the Domar protest to be untimely and not for consideration on the merits, since it was filed with our Office on April 14, 11 working days after Domar received notification that its identical protest to the contracting officer had been denied (initial adverse agency action). Our Bid Protest Procedures require a filing with our Office within 10 working days of formal notification of the initial adverse agency action. 4 C.F.R. § 21.2(a) (1981).

Domar requests us to reconsider our decision because it believes that good cause exists for the consideration of the protest and that the protest raises issues significant to procurement practices and procedures. Our Bid Protest Procedures permit consideration on the merits of an untimely protest if either of these two exceptions exists. 4 C.F.R. § 21.2(c) (1981)

[Request for Reconsideration]

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As to the issue of good cause, Domar states that, because its protest was mailed early enough to have been timely received by our Office, the delay is attributable to the United States Postal Service and Domar should not be penalized for the delay that was not its fault. Domar notes that the post office where the protest letter was mailed is within the distance for delivery on the next "postal work day" (April 11), let alone on the next general work day (April 13).

Further, Domar suggests that the protest may actually have been received by our Office on April 13. In that regard, Domar states that the telegram requesting reconsideration was time/date stamped by our Index and Files Section at 8:49 a.m., on May 29, but that Western Union advised that the telegram was delivered to our Office on May 27 at 12:42 p.m. Domar believes that the same tardy time/date stamping might have occurred with the receipt of the protest letter. Domar notes that its protest letter was time/date stamped by our Index and Files Section at 4:28 p.m. on April 14. Because the post office rarely delivers that late in the day, Domar states, it is likely that delivery was made earlier than that time--presumably even a day earlier. Also, Domar believes that it should not be penalized because the protest was received 1 day late, since it fully cooperated with the Government by extending the acceptance period for its bid by a total of 60 days when the bids were being evaluated for award.

Domar further contends that permitting the low bidder to correct its bid price from a unit price of \$0.347 to \$0.397 (the latter price being \$0.0105 lower than the Domar unit price of \$0.4075) merely because of the low bidder's assertion that the figure "9" in the worksheets was misread as a figure "4" when the figure was transposed to the bid presents an issue significant to procurement practices and procedures. Domar suggests that the matter is particularly significant because the same bidder had 5 months earlier submitted a unit price of \$0.425 for the same item which should have alerted it to the possibility of an error in the present situation before bidding. In addition, Domar maintains that the fact that the contracting agency may have ignored our decisions presents a significant issue.

We do not agree with the Domar contention that its untimely protest should be considered on the merits because good cause exists. Domar's protest was sent by certified mail on April 10, 1 working day before the last working day for filing the protest. Bidders are cautioned in our Bid Protest Procedures that protests should be transmitted to our Office in a manner that will assure their earliest receipt and that untimely protests will not be considered unless sent by certified mail not later than the fifth working day prior to the final date for filing a protest. Consequently, the fact that the protest letter may have been delayed in the mail gives rise to no basis for our Office to consider the untimely protest. Products Engineering Corporation, B-182763, January 29, 1975, 75-1 CPD 65.

Further, while there was an unusual delay (based upon the time that Western Union advised Domar that its telegram was delivered to us) between the receipt and the time/date stamping on the Domar request for reconsideration by the Index and Files Section, that has no effect on the question of the time of receipt of the original protest. The important date to be considered in determining the timeliness of receipt of the original protest is the date of receipt by our mailroom. Domar admits that the certified mail receipt is dated April 14. Although Domar suggests that the protest should have been received earlier, it has furnished no evidence to show that the protest was received before April 14. Once the protest was received on April 14 it was late. Any subsequent delay that may have occurred in the Index and Files Section after receipt in the mailroom is immaterial.

While Domar may have been cooperative while the contracting agency decided to whom to make the award, Domar did this in the expectation that it might receive the award. However, this action has no bearing on the timeliness of Domar in presenting its protest to our Office.

Moreover, we do not consider that Domar's protest presents a significant issue. The significant issue exception to our timeliness rules is limited to issues which are of widespread interest to the entire procurement community and is exercised sparingly so that

timeliness standards do not become meaningless. Metal Art, Inc., B-193038, B-192992, February 8, 1979, 79-1 CPD 84. Our consideration of the instant protest on the merits would serve the interests of Domar alone. No benefit would accrue to the procurement community in general inasmuch as our previous decisions have considered the correction of mistakes in bids based on bidders' worksheets and have set forth the principles to be applied to those situations. See, for example, Servidone Construction Corp.; Midwest Construction Company, B-198711, August 12, 1980, 80-2 CPD 109; Active Fire Sprinkler Corporation, 57 Comp. Gen. 438 (1978), 78-1 CPD 328; 53 Comp. Gen. 232 (1973); 51 id. 503 (1972). Since the issue has been treated on its merits previously, Domar's untimely protest does not present a significant issue for consideration under our Bid Protest Procedures. John Mondrick Plumbing & Heating, Inc., B-201675.3, July 31, 1981, 81-2 CPD \_\_\_\_; A.C.E.S., Inc., B-181926, January 2, 1975, 75-1 CPD 1.

Accordingly, our decision of May 21 is affirmed.

*Fo. J. H. Barclay, Jr.*  
Harry R. Van Cleve  
Acting General Counsel



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-202901.2

August 17, 1981

The Honorable Matthew J. Rinaldo  
House of Representatives

Dear Mr. Rinaldo:

We refer to your letter of June 17, 1981, in regard to the request of Domar Buckle Mfg. Corp., that we reconsider our decision in Domar Buckle Mfg. Corp., B-202901, May 21, 1981, 81-1 CPD 401, which dismissed the protest as untimely.

Enclosed is a copy of decision of today affirming the May 21 dismissal.

Sincerely yours,

*J. H. Barclay, Jr.*  
For Harry R. Van Cleve  
Acting General Counsel

Enclosure