

**DECISION**

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

**FILE:** B-209236.2

**DATE:** December 21, 1982

**MATTER OF:** Jarrell-Ash Division, Fisher Scientific  
Company--Request for Reconsideration

**DIGEST:**

1. Where the agency, in notifying offeror of the unacceptability of its proposal, also advises offeror of reasons for rejection of its proposal, a protest based on such rejection must be filed within 10 working days of receipt of such notice, rather than within 10 days of subsequent meeting with contracting officials, since the grounds for protest were known upon receipt of the advice initially furnished.
2. Argument that the contracting officer's representations and actions led protester to believe that it need not comply strictly with our bid protest timeliness requirements is rejected. GAO Bid Protest Procedures provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a contracting officer.
3. For determining timeliness of protest under GAO Bid Protest Procedures, where agency sends actual notification of grounds of protest to offeror's sales office, rather than to designated mailing address in its proposal, offeror is considered to have received actual notice of grounds for protest.

Jarrell-Ash Division (JAD) of Fisher Scientific Company requests reconsideration of our decision Jarrell-Ash Division, Fisher Scientific Company, B-209236, October 26, 1982, 82-2 CPD 370. In that decision, we dismissed JAD's protest as untimely because JAD's protest was received in GAO more than 10 days after JAD initially was notified by the Department of Agriculture (Agriculture) that its proposal submitted under request for proposal (RFP) No. 84-A-58E-82, was determined technically unacceptable and of the bases for this determination.

JAD concedes that it received notice of the rejection of its offer on September 10, 1982, and that it did not file its protest with our Office until September 27, 1982, the dates by which we determined the protest untimely. However, JAD states we "overlooked" certain facts and also provides additional information which it requests we consider in determining the timeliness of its protest.

JAD states that it requested a technical meeting on August 29, 1982, and a meeting was scheduled for September 16, 1982. JAD further states that the meeting was postponed by Agriculture until September 23, 1982. JAD asserts this meeting was not intended to be a debriefing, but a technical discussion of its proposal, and that it protested within 10 days of this meeting. JAD also contends that it was led to believe by the agency contracting officials that it could wait until after this meeting was held to file a protest, and that Agriculture delayed this meeting until after the expiration of the time for filing a protest under our Bid Protest Procedures. JAD also protests that the letter from Agriculture was not sent directly to the authorized negotiator or administrator whose name and address was on the proposal, but instead was sent to JAD's sales office. JAD, therefore, contends that its protest should be considered on the merits.

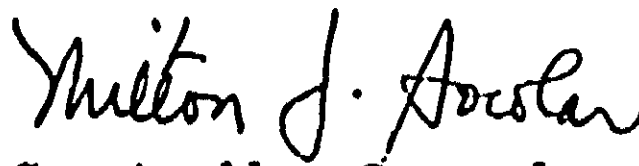
With regard to JAD's decision to wait until after the meeting to protest, JAD now argues that it understood that the scheduled meeting was to be a discussion of its technical proposal, not a debriefing, and that JAD concluded that its proposal was still being considered. We refer to JAD's original letter of protest which states that the letter from Agriculture advised JAD that its "proposal will not receive further consideration for award." In view of this advice, we cannot agree with the protester that he was led to believe the meeting would be other than a debriefing. Although we have stated that a protester might reasonably delay the filing of a protest until it has had a debriefing when the information available earlier left uncertain whether there was any basis for protest, see Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423, we also have held that where an offeror is notified of the unacceptability of its proposal, and the reasons for the proposal's rejection, a protest based on such rejection must be filed within 10 working days of such notice. The protester cannot

wait for a subsequent meeting with contracting officials since the grounds for protest were known upon receipt of advice initially furnished. BDM Corporation, B-201291, June 26, 1981, 81-1 CPD 532, Bauer Ordnance Company, B-193308, December 28, 1978, 78-2 CPD 441.

JAD's allegation that its delay in protesting was the result of actions or representations by the agency does not excuse JAD from compliance with our bid protest timeliness requirements. We have stated that our Bid Protest Procedures provide objective criteria for application by our Office to all protests before us and may not be waived by the actions or representations of a contracting officer. Owl Technical Associates, Inc.--Reconsideration, B-206753.2, October 29, 1982, 82-2 CPD 382; Demlar Medical, Inc., B-204317, January 26, 1982, 82-1 CPD 56.

JAD also protests that the notice of rejection of its proposal was sent to its sales office rather than the address designated in its proposal. We have held that actual notification to the designated company official is not required to commence the start of the 10-day filing requirement under our Bid Protest Procedures. It is clear that JAD was notified on September 10, 1982, and its sales office could have filed the protest on behalf of the firm, after discussing the matter with the company officials who prepared the offer. Better Business Machines, B-191715, August 9, 1978, 78-2 CPD 107; see also, Central Intelligence Agency, National Office Systems, Inc.--Request for Reconsideration, B-201133.2, B-201133.3, June 22, 1981, 81-2 CPD 337.

We affirm our prior decision.

*for*   
Comptroller General  
of the United States