

DECISION

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

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FILE: B-208167.2**DATE:** January 9, 1983**MATTER OF:** Peter A. Tomaino, Inc.--Request for
Reconsideration**DIGEST:**

Prior decision dismissing protest as untimely is affirmed because protester has failed to demonstrate that decision was based on erroneous interpretation of fact or law or information not previously considered.

Peter A. Tomaino, Inc., requests reconsideration of our decision in the matter of Peter A. Tomaino, B-208167, October 29, 1982, 82-2 CPD 385, which dismissed as untimely its protest against the Department of Agriculture (Agriculture) award of a contract under solicitation No. R5-06-82-13. For the reasons that follow, we affirm our prior decision.

The record of the initial protest shows that in a letter to Agriculture dated June 4, 1982, the protester objected to the agency's acceptance of an offer which proposed relocation of the office's operations into a single renovated building. The protester mainly was objecting to the evaluation of its proposal as compared to the evaluation of the proposal of Mountain Distributing Company (Mountain), the awardee. The agency's response, a letter dated June 10, 1982, received by the protester on June 16, 1982, affirmed its decision to accept Mountain's offer and, in effect, denied the protest against that decision.

By letter dated June 21, 1982, the protester again sought resolution of its protest with the agency. The protester essentially reargued its earlier points about the merits of its two-site offer as compared to the selected offer. Also, one new argument was raised concerning Agriculture's decision not to assess cost penalties for "late occupancy" in any offer. In reply to this letter, the agency advised the protester to file a protest with our Office and it did so by letter received in our Office on July 7, 1982. We dismissed the protest as untimely since it was received in our Office more than 10 days after the protester received (on June 16) Agriculture's initial

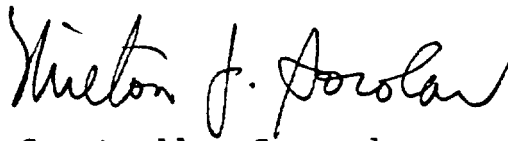
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adverse agency action on the protest. See 4 C.F.R. § 21.2(a) (1982). We noted that the protester's June 4 protest to Agriculture covered essentially the same grounds of protest as the protest filed with our Office.

In its request for reconsideration, the protester asserts the initial letter to Agriculture dated June 4 was based on incorrect information supplied by the contracting officer. The protester states that the proper information was not received until June 21 and, therefore, the first document protesting the contract based on the proper information was the protester's June 24 letter. Consequently, the protester contends that Agriculture's June 25 letter that advised it of the right to protest to our Office was the initial adverse action, which would make its protest timely.

Our decision was based on the finding that the June 4 letter contained substantially the same grounds of protest as the protest filed with our Office. Agriculture's initial adverse agency action on these grounds was received by the protester on June 16. While the protester alleges that the June 21 letter constitutes the first protest based on the proper information, our review reveals no substantial difference between the June 4 letter and the June 21. Thus, as we concluded in the initial decision, Tomaino knew or should have known its basis of protest on June 4 and the agency's denial of the protest to it on June 16 constituted adverse action. Further, while the protester may not have had actual knowledge of our timeliness rules until receipt of the agency's letter, our Bid Protest Procedures are published in the Federal Register at 40 Fed. Reg. 17979 (1975), and protesters are charged with constructive notice of their contents. Wahl Clipper Corporation, B-207064, June 1, 1982, 82-1 CPD 512.

For the above reasons, the protester has failed to demonstrate that our prior decision was based on information not previously considered or an erroneous interpretation of fact or law. 4 C.F.R. § 21.9(a). Therefore, it is affirmed.

for 
Comptroller General
of the United States