

**DECISION**



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

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**FILE:** B-218232.2

**DATE:** April 2, 1985

**MATTER OF:** Shannon County Gas--Reconsideration

**DIGEST:**

Reliance on agency advice that a protest could be filed with GAO within 30 days of denial of a protest to the agency is not good cause for filing an untimely protest by the protester's attorney where material accompanying the agency's letter clearly stated that such protests must be filed within 10 days.

Shannon County Gas requests reconsideration of our dismissal of its protest concerning the award of a contract for bottled and propane gas to Blu-Gas of Rushville, Nebraska, under invitation for bids (IFB) No. A00-0426, issued by the Bureau of Indian Affairs, Department of the Interior. We affirm our dismissal of the protest.

By letter dated February 19, 1985, received here on February 25, an attorney for Shannon County Gas filed a protest with this Office complaining about the agency's failure to award the firm a contract under the IFB and to comply with agency procedures that implement the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, 88 Stat. 2203 (1975) (codified in numerous titles of the U.S. Code) and the Buy Indian Act, 25 U.S.C. § 47 (1982). We dismissed the protest as untimely because it was filed more than 1 month after the denial on January 23 of Shannon County Gas' protest to the agency. Our Protest Regulations provide that, in such circumstances, protests to this Office must be filed within 10 days of when the protester learns of adverse agency action on its agency protest. [4 C.F.R. § 21.2(a)(3) (1985)].

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In requesting reconsideration, the protester contends that the reason its protest here was untimely was because of a statement in the agency's January 21 decision advising the protester that it could file a further protest with this Office within 30 days of receipt of the agency's decision. The protester says it was misled by this advice and therefore we should consider its protest under section 21.2(c) of our Regulations which provides for consideration of an untimely protest when the protester shows that it had good cause for filing late. The protester also urges us to consider its protest because the issues raised are significant.

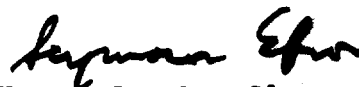
In our view, the protester has not shown that it had good cause for not filing its protest in a timely manner. The good cause exception contained in both our former Bid Protest Procedures, 4 C.F.R. § 21.2(c) (1984), and in our current Regulations, which were effective January 15, generally refers to situations where some compelling reason beyond the protester's control prevents the protester from timely filing its protest. Owl Technical Associates, Inc.--Reconsideration, B-206753.2, Oct. 29, 1982, 82-2 CPD ¶ 382. In this case, although the agency's January 21 decision incorrectly stated that the protester could file a protest with our Office within 30 days, the decision cited our Bid Protest Procedures, and indicated that a copy was attached. It is not clear whether the copy actually attached was of our former procedures or of our new Regulations. Regardless of which was attached, however, a reading of either would have revealed that the period within which to file a protest here was 10, not 30, days from receipt of the adverse decision on the agency protest. In addition, since our Regulations have been published in the Federal Register, the protester was charged with at least constructive knowledge of our filing requirements. See Holmes Ambulance Service Corp., B-213743, Feb. 2, 1984, 84-1 CPD ¶ 143. While the agency's incorrect advice to the protester is regrettable, we do not think it is sufficient to relieve the protester from complying with our timeliness rules, see Peter A. Tomaino, Inc., B-208167, Oct. 29, 1982, 82-2 CPD ¶ 385, particularly since the protester was represented by counsel.

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We also decline to consider the merits of this protest under the significant issue exception to our timeliness rules. In order to prevent our timeliness requirements from becoming meaningless, this exception is strictly construed and seldom used, Kearflex Engineering Co., B-212537, Feb. 22, 1984, 84-1 CPD ¶ 214, and generally applies only to issues of widespread interest to the procurement community that have not been considered previously. Sequoia Pacific Corp., B-199583, Jan. 7, 1981, 81-1 CPD ¶ 13. In this case, while we recognize the importance of the issues to the protester, it does not appear that our resolution of these issues would benefit anyone other than the protester. See Universal Design Systems Inc.--Reconsideration, B-211547.3, Aug. 16, 1983, 83-2 CPD ¶ 220.

Moreover, we note that the regulations under section 7(b) of the Indian Self-Determination and Education Assistance Act with which the protester claims the agency did not comply involve procedures for the award of subcontracts to Indian-owned firms, not prime contracts. See American Indian Technical Services, Inc., B-207275, May 17, 1982, 82-1 CPD ¶ 470. We further note that, to the extent the protester is contending that the Buy Indian Act required the procurement to be set aside for Indian-owned firms, this Office will not review the broad discretion to implement such a set-aside that the agency enjoys under the Act unless there is a clear showing that this discretion may have been abused. Wakon Redbird & Associates, B-205995, Feb. 8, 1982, 82-1 CPD ¶ 111. There has been no such showing here.

We affirm our dismissal of the protest.

*for*   
Harry R. Van Cleve  
General Counsel