

J. H. Kelly  
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**DECISION**



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

**FILE:** B-218741.3 **DATE:** June 10, 1985  
**MATTER OF:** Agha Construction--Reconsideration

**DIGEST:**

While GAO retains discretion to grant exceptions to the requirement that a protester submit a copy of its protest to the contracting agency within 1 day after the protest is filed, such exceptions will be granted sparingly and only under compelling circumstances, to prevent erosion of the requirement's purpose.

Agha Construction (Agha) requests reconsideration of our April 29, 1985 dismissal of its protest concerning solicitation No. DACA05-85-R-0049, issued by the Department of the Army for construction of a mobile home park at Fort Ord, California. Agha argued in the protest that its proposal was equal in quality to that of the awardee, and that it thus should have received the award based on its lower proposed monthly rent. We dismissed the protest because Agha did not furnish a copy of it to the contracting agency within 1 day after filing the protest in our Office, as required under section 21.1(d) of our Bid Protest Regulations, 4 C.F.R. Part 21 (1985). We affirm the dismissal.

Agha argues that we should reopen the protest because: (1) it mailed a copy of the protest to the Army on April 25, the day after filing the protest with GAO, and still within the 10-day timely filing period; (2) the issues raised are of widespread interest; and (3) our Procurement Law Control Group (the section of GAO in which protests are filed) did not advise Agha of the 1-day requirement during Agha's telephone request as to protest filing procedures.

The basis for section 21.1(d) of our Regulations is found in 31 U.S.C. § 3551 et seq., as added by section 2741(a) of the Competition in Contracting Act of 1984, Pub. L. No. 98-369, which requires both that our Office notify the contracting agency of the existence of a protest within 1 day of the filing date, and that the agency furnish a report on the protest within 25 working days after this notice. Permitting a protester to delay in advising

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the agency of the specific grounds of protest not only would hamper the agency's ability to meet the 25-day statutory deadline, but also would delay protest proceedings and thereby frustrate our efforts to consider all objections to agency procurement actions as timely as possible. Storage Technology Corp., B-218148.2, Mar. 11, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 C.P.D. ¶ 300. We therefore have imposed on the protester the relatively light burden of furnishing its precise protest grounds to the agency within the same time frame as our own notice to the agency.

We retain, in section 21.1(f) of our Regulations, the discretion to grant exceptions to this requirement, but we will do so only sparingly, under compelling circumstances, to avoid eroding the requirement's purpose. Agha's arguments present no such compelling circumstances. First, the fact that Agha sent a copy of its protest to the Army within the period for filing a timely protest (see 4 C.F.R. § 21.2(a)(2)) is of no consequence, since the Army's 25-day reporting period and the protest proceedings both ran from the filing date. Again, a delay by the protester in notifying the agency after the filing date interferes with the agency's efforts to meet the statutory deadline and delays the protest process. We also point out that the Army advised us on April 29, 5 days after the protest was filed, that it still had not received a copy of Agha's protest grounds.

Second, while procurement community interest in protest issues can be a basis for our reviewing matters not timely raised if we also have not previously considered similar issues, see 4 C.F.R. § 21.2(c) (the significant issue exception to our timeliness requirements), there is no similar exception to provide for waiving the agency notice requirement. Moreover, the exception would be inapplicable here in any case, since we have considered numerous protests challenging technical evaluation results. See, e.g., Air Flight Service, B-216996, Apr. 12, 1985, 85-1 C.P.D. ¶ 420.

Finally, Agha's failure to comply with the 1-day notice requirement is not excused by its reliance on allegedly incomplete information from the Procurement Law Control Group as to filing requirements. It is solely the responsibility of the protester, not our Office, to assure that all filing requirements are met, and the protester must bear the consequences of failing to do so. We have held in this

connection that protesters are on constructive notice of regulations we have published in the Federal Register (see 49 Fed. Reg. 49,417 (1984)), and that a protester's professed unawareness of these published regulations is not a proper basis for waiving their requirements. The Pangborn Co.--Reconsideration, B-218087.3, Mar. 11, 1985, 85-1 C.P.D. ¶ 298.

The dismissal is affirmed.

*Harry R. Van Cleve*  
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