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**DECISION**



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

B-220442.2

FILE:

DATE: December 2, 1985

MATTER OF: Farrell Lines, Inc.--Reconsideration

**DIGEST:**

1. Where basis for protest arose on receipt of materials requested under the Freedom of Information Act, protester's assertion that it received so much information that it needed more than 10 working days to review the material before protesting does not warrant consideration of the untimely protest under the timeliness exception for good cause, which is limited to circumstances where some compelling reason beyond a protester's control prevented a timely filing.
2. GAO will not consider an untimely protest under the timeliness exception for significant issues where the matter raised is not of widespread interest or importance to the procurement community.

Farrell Lines, Inc., requests that we reconsider our November 14, 1985, dismissal of its untimely protest against the procurement procedures used by the Military Sealift Command (MSC) in connection with solicitation No. N00033-85-R-1008 for the charter of barge system vessels. Farrell asks that we consider the merits of its protest under section 21.2(c) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985), which states that an untimely protest may be considered for good cause shown or where it raises issues significant to the procurement community.

We affirm our dismissal.

Farrell knew the basis for its protest by October 4, when it received the last in a series of documents requested from MSC under the Freedom of Information Act (FOIA), but did not file the protest until November 13, by letter of that same date. We dismissed the matter pursuant to

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section 21.2(a)(2) of our Bid Protest Regulations, which requires that a protest like Farrell's be filed within 10 working days after the basis for it is known.

Farrell contends that the exception in section 21.2(c) for good cause should apply essentially because it took MSC a long time to respond fully to Farrell's request for information on the procurement and because the volume of material Farrell received from MSC after its FOIA request was so great that the firm needed more than 10 working days to examine it.

The good cause exception to our timeliness requirements is limited to circumstances where some compelling reason beyond a protester's control prevented the timely filing of a protest. Mounts Engineering--Reconsideration, B-218102.2, Apr. 16, 1985, 85-1 C.P.D. ¶ 435. MSC's alleged delay in providing information to Farrell is relevant only in terms of when Farrell knew its basis for protest; here, the record is clear that the very latest Farrell knew its protest basis was October 4. We consistently have held that a protest based on materials received pursuant to an FOIA request will be considered timely only if filed within 10 days of receipt of the information on which the protest is based (assuming the protester diligently pursued the information's release). See, e.g., Carrier Corp., B-214331, Aug. 20, 1984, 84-2 C.P.D. ¶ 197. The fact that the FOIA request resulted in the agency's furnishing the requester a large number of documents over a period of time does not warrant invoking the exception.

Farrell also suggests that its protest should be considered under section 21.2(c) because it raises a significant issue.

An issue is significant within the meaning of section 21.2(c) of our Regulations only where it involves a matter of widespread interest or importance to the procurement community that has not been considered on the merits in a previous decision. Harry Kahn Associates, Inc., B-216306.2, June 28, 1985, 85-1 C.P.D. ¶ 739. We construe the exception strictly and use it sparingly to prevent our timeliness rules from being rendered meaningless. Id. We have no reason to believe that the procurement community in general would be interested in the issue Farrell's protest

raises, which basically involves the evaluation of offers and the resultant award under this particular solicitation. See Taurio Corp., B-219008.2, July 23, 1985, 85-2 C.P.D. ¶ 74.

Our dismissal of Farrell's protest is affirmed.

*for Seymour Efros*  
Harry R. Van Cleve  
General Counsel