



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Paul Abbott Trucking--Request for Reconsideration  
File: B-232247.2  
Date: September 7, 1988

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### DIGEST

Protest filed more than 10 days after protester received notice of adverse agency action on agency level protest is untimely and will not be considered by our Office on basis of allegation that contracting activity delayed or misled protester.

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### DECISION

Paul Abbott Trucking requests reconsideration of our dismissal as untimely of its protest against the award of a contract for refuse collection to Tri-States Services under invitation for bids (IFB) No. DAAC79-88-B-0051, issued by the Army. We deny the request for reconsideration.

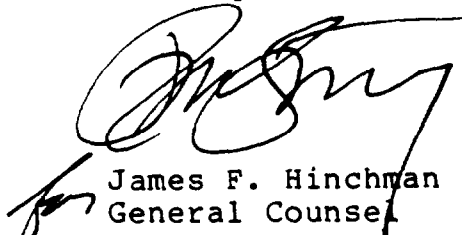
Abbott's protest was dismissed as untimely because it was filed in our Office more than 10 days after Abbott received notice of adverse action on its agency level protest. See 4 C.F.R. § 21.2(a)(3) (1988). In its request for reconsideration, Abbott merely states that the reason for its untimely filing was the "runaround" that it received from personnel at the contracting agency, and reiterates its grounds for protest.

Abbott does not provide particulars concerning this alleged "runaround." However, to the extent that Abbott is asserting that we should rule on the merits of its protest under the "good cause" exception to our timeliness requirements, 4 C.F.R. § 21.2(b), because it was misled by the Army, this does not alter the untimeliness of the protest. Leo Moran Construction Co., B-229676, Mar. 11, 1988, 88-1 CPD ¶ 254. The timeliness requirements of our Bid Protest Regulations may not be waived by the actions taken by the contracting agency. Pacific Propeller, Inc., B-229868, Dec. 30, 1987, 87-2 CPD ¶ 649.

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In any event, Abbott does not present an adequate basis for protest. Abbott asserts that Tri-States lacks the capacity to perform the contract, and does not intend to perform as required under the specifications because its bid is less than the cost of performance. However, an awardee's ability to perform at its offered price is a matter of responsibility, and our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials, or of misapplication of definitive responsibility criteria, neither of which is alleged here. See 4 C.F.R. § 21.3(m)(5); Service & Sales Inc., B-229602, Nov. 25, 1987, 87-2 CPD ¶ 525. Further, whether Tri-States performs in accordance with the requirements of the contract awarded under the IFB involves a matter of contract administration, which our Office does not review under its bid protest function. 4 C.F.R. § 21.3(m)(1); AJK Molded Products, Inc., B-229619, Feb. 1, 1988, 88-1 CPD ¶ 96.

The request for reconsideration is denied.



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General Counsel