



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Koch Construction, Inc.--Reconsideration  
File: B-232585.2  
Date: November 7, 1988

### DIGEST

Prior dismissal of protest as untimely is affirmed where the protest against conversion of invitation for bids to a negotiated procurement was not filed in the General Accounting Office (GAO) until 3 weeks after proposals were due. The alleged advice of contracting officer "to wait" to file does not result in waiver of the timeliness requirements of GAO's Bid Protest Regulations.

### DECISION

Koch Construction, Inc., requests reconsideration of our decision in Koch Construction, Inc., B-232585, Sept. 26, 1988, 88-2 CPD ¶ \_\_\_\_, in which we dismissed as untimely its protest against the award of a contract under request for proposals (RFP) No. FCS-9-ND-88, issued by the Soil Conservation Service (SCS), Department of Agriculture. Koch contends that its untimely filing was caused by the advice of the contracting officer to wait to file its protest.

We affirm our dismissal.

Koch's protest was dismissed as untimely because it was filed in our Office approximately 3 weeks after the closing date for receipt of proposals. Since Koch was protesting improprieties apparent in the solicitation--the propriety of the rejection of all bids under the initial solicitation and the conversion to negotiated procurement, and the failure to provide sufficient time to prepare a proposal--it was required to file its protest prior to that closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

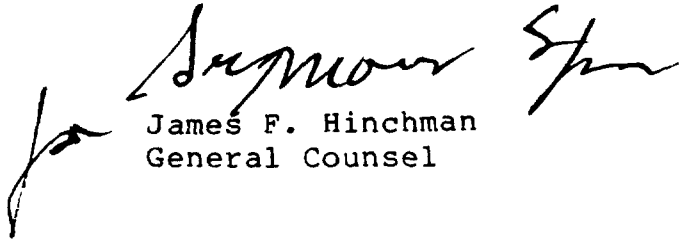
In its request for reconsideration, Koch alleges that at the time bids were rejected, it told the contracting officer that it intended to protest. Koch further alleges that the contracting officer advised it to "hold off filing a protest

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until the outcome of the re-bid was known." Consequently, it claims that we are estopped from ruling its protest untimely. We disagree.

Assuming, arguendo, the protester's claim that he was misinformed is true,<sup>1/</sup> the timeliness requirements of our Regulations may not be waived by actions taken by the contracting agency. Bio-Temp Scientific, Inc.--Request for Reconsideration, B-231358.2, June 10, 1988, 88-1 CPD ¶ 558. Further, a protester's apparent lack of actual knowledge of our Bid Protest Regulations does not permit consideration of its untimely protest. Our Regulations were published in the Federal Register and appear in the Code of Federal Regulations. Protesters are charged with constructive notice of their contents. Id.

Accordingly, the prior dismissal is affirmed.



James F. Hinchman  
General Counsel

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<sup>1/</sup> The SCS informally advises us that the contracting officer denies telling Koch to wait with regard to filing its protest.