

Lebowitz



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Rudd Construction Incorporated--Second  
Request for Reconsideration

**File:** B-234936.3

**Date:** July 28, 1989

## DIGEST

Where the protester is in possession of facts that would establish the timeliness of its protest, but does not include those facts in its initial protest submission, the protester bears the risk of dismissal, and upon reconsideration of the dismissal, the General Accounting Office will not consider the information which should have been presented initially.

## DECISION

Rudd Construction Incorporated requests that we reconsider our decision in Rudd Constr. Inc.--Reconsideration, B-234936.2, May 1, 1989, 89-1 CPD ¶ 416. In that decision, we denied Rudd's request for reconsideration of our dismissal of its protest of the rejection of its bid as late under invitation for bids (IFB) No. DTFA11-89-B-00109, issued by the Federal Aviation Administration (FAA) for remodeling the air traffic control tower at Pitkin County Airport in Aspen, Colorado.

We deny this request for reconsideration.

Bid opening under this IFB was scheduled for March 2, 1989. Rudd's bid, delivered by Federal Express, was not received by the contracting officer until after the time of bid opening. The FAA rejected Rudd's bid as late on March 3, and Rudd subsequently filed its initial protest with our Office on March 27. Based on Rudd's initial submissions, we dismissed the protest as untimely because while Rudd was informed of its basis of protest on March 3, it failed to file its protest with our Office within 10 working days of that date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988).

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In its first request for reconsideration, Rudd alleged that by letter dated March 7, it had filed an agency-level protest. We denied Rudd's request for reconsideration because at the time of its initial protest, Rudd never informed our Office of its agency-level protest and, on reconsideration, offered no explanation for its failure to include this relevant information in its initial protest. Furthermore, even after alleging on reconsideration that it filed an agency-level protest, Rudd did not submit a copy of its letter of March 7 as evidence that it actually did file a protest with the agency. We explained that under our Regulations, a protester must submit a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.12(a) (1988). We further stated that information not previously considered means information that was not available to the protester when the initial protest was filed. See Global Crane Inst.--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 CPD ¶ 606. We advised that any other interpretation would permit a protester to present information in a piecemeal fashion and unnecessarily disrupt the procurement of goods and services. Id.

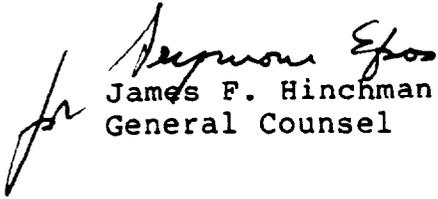
Now, in its second request for reconsideration, Rudd has submitted a copy of its agency-level protest dated March 7. Rudd argues that it has proven that its protest was timely filed and requests that we consider the merits of its protest.

We decline to do so. In light of our views as set forth above, we have taken the position that a protester has the obligation to provide information establishing the timeliness of the protest when on its face the protest otherwise appears untimely. In other words, when a protest appears untimely on its face, a protester which is in possession of facts that would establish its timeliness, but which does not initially provide these facts to our Office, runs the risk of dismissal and of our refusal to reconsider the matter when the protester subsequently presents these facts. See Robert Wall Edge--Reconsideration, B-234469.2, Mar. 30, 1989, 68 Comp. Gen. \_\_\_\_, 89-1 CPD ¶ 335, citing World-Wide Sec. Serv. Inc.--Reconsideration, B-225270.2, Mar. 17, 1987, 87-1 CPD ¶ 294; Global Crane Inst.--Request for Reconsideration, B-218120.2, supra.

Here, Rudd waited almost 2 months from the time of its initial protest to our Office to provide the information and evidence in its possession to establish the timeliness of its protest. The protest originally submitted to us

appeared untimely and was properly dismissed.  
Therefore, Rudd is not entitled to consideration of its  
protest on merits.

The request for reconsideration is again denied.

  
James F. Hinchman  
General Counsel