

Amy Shimamura



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Data Express--Reconsideration

**File:** B-241001.2

**Date:** January 3, 1991

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Joseph A. Paulus for the protester.  
Eugene M. Feinberg, Department of Agriculture, for the agency.  
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office  
of the General Counsel, GAO, participated in the preparation  
of the decision.

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### DIGEST

Reconsideration of dismissal of protest as untimely is denied where the protester knew the basis of its protest more than 10 working days prior to filing its protest but failed to file its protest within the 10-day period as required by Bid Protest Regulations.

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### DECISION

Data Express requests reconsideration of the dismissal as untimely of its September 4, 1990, protest against the rejection of its proposal, submitted in response to request for proposal (RFP) No. 00-90-R-1031, issued by the Department of Agriculture for the purchase of a custom-designed modem for installation at the department's National Computer Center, Kansas City, and Farmers' Home Administration field offices.

We deny the request for reconsideration.

Under our Bid Protest Regulations, protests on matters such as this one are required to be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1990). On September 5, we summarily dismissed the protest because it was not filed within 10 working days of August 14, the date on which Agriculture conducted a debriefing with the protester, where the agency detailed to the protester the reasons its proposal was found technically unacceptable.

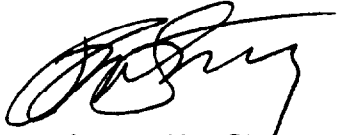
In its reconsideration request, Data Express states that the protest was timely filed on September 4, because it was finally informed of the rejection of its proposal on

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August 28, during a telephone conversation with the agency's contracting officer.

We disagree. While it is true that where there is doubt as to when the protester first became aware of its basis for protest we resolve that doubt in the protester's favor for the purpose of determining timeliness, see Eklund Infrared, B-238021, Mar. 23, 1990, 90-1 CPD ¶ 328, the record here clearly indicates that Data Express was notified of the rejection of its proposal, and the reasons therefor, much earlier than August 28. By letter dated July 30, Agriculture specifically informed Data Express that its proposal was outside the competitive range, listed the reasons the proposal was unacceptable, advised that discussions would not be conducted, and informed Data Express that it was entitled to a debriefing. The debriefing occurred on August 14, at which Data Express was further informed of its proposal deficiencies. Data Express does not deny that it received the July 30 letter, that it requested a debriefing, or that a debriefing was conducted on August 14.

Thus, it is clear that Data Express knew the bases of its protest more than 10 days prior to filing its protest on September 4 from the July 30 letter and the August 14 debriefing, both of which detailed why its proposal was rejected. While Data Express claims that the agency told it that it would investigate some points raised at the August 14 debriefing, this did not permit Data Express to delay in filing its protest. See Health Research Assocs., Inc., B-237075.2, June 8, 1990, 90-1 CPD ¶ 541. Moreover, the only point which the agency said it would investigate was Data Express' reference to Data Express, B-234685, July 11, 1989, 89-2 CPD ¶ 28, a matter completely irrelevant to the present case. This cannot be reasonably regarded as reopening negotiations, as is contended by Data Express, or justify extending the date by which the protest must be filed to be considered timely.



Robert M. Strong  
Associate General Counsel