



Comptroller General  
of the United States

Washington, D.C. 20548

Ashen  
147764

## Decision

**Matter of:** ETA Technologies Corporation--Reconsideration

**File:** B-248851.2

**Date:** October 6, 1992

J. Stanley Sanders, Esq., Sanders & Dickerson, for the protester.

David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Request for reconsideration is untimely where not filed--that is, received--at the General Accounting Office within 10 working days after the basis for reconsideration is known. A protester acts at its own risk when it relies upon the mails to deliver protest materials, and loss in the mails does not serve as a basis for reviewing a request for consideration that has not complied with the requirement for timely receipt.

### DECISION

ETA Technologies Corporation requests reconsideration of our May 29, 1992, dismissal of its protest against the Department of the Air Force's award of a contract to PRC Corporation, under request for proposals No. F41689-91-R-0021, for systems engineering technical assistance. We dismissed ETA's protest because it appeared the protest had been filed more than 10 working days after the protester knew of the basis for the protest and therefore was untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2) (1992).

We dismiss the request as untimely.

In the initial protest filed with our Office on May 28, counsel for ETA stated that "ETA has reviewed with us the matters discussed during its debriefing on May 12, 1992, on the contract award, and based upon our discussions with ETA contracting personnel and our review of applicable provisions of the Code of Federal Regulations (CFR), we hereby submit this letter on ETA's behalf in protest of the award to PRC." ETA specifically questioned several of the labor rates offered by PRC and contended that the source selection improperly had been made solely on the basis of cost. Since ETA's May 28 protest indicated that it was

based upon information learned by ETA at its May 12 debriefing, more than 10 working days earlier, we dismissed the protest as untimely. 4 C.F.R. § 21.2(a)(2).

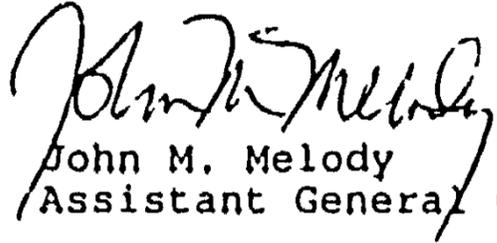
In its submission received in our Office on September 10 (but dated August 31), ETA enquired as to the status of a June 15 letter it claimed to have sent to our Office, in which it requested reconsideration of our May 29 dismissal of its initial protest as untimely. In the June 15 letter, a copy of which was enclosed with its September 10 submission, ETA claimed that it first learned of the basis for its protest, not at the May 12 debriefing, but only after it received and reviewed a copy of PRC's contract on May 19. ETA argued that its subsequent May 28 protest therefore was timely filed because it was filed only 6 working days after receiving a copy of the contract.

Under our Bid Protest Regulations, a request for reconsideration must be filed not later than 10 working days after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.12(b). The term "filed" under our Regulations means receipt of the protest, or other submission at our Office. 4 C.F.R. § 21.0(g). ETA's September 10 submission to our Office was received more than 3 months after our May 29 dismissal of its protest. Although ETA claimed in the September 10 submission that it had previously mailed the June 15 request for reconsideration to our Office, we have no record of having previously received the June 15 letter and ETA, in response to our request, has indicated that it is unable to furnish proof of receipt by our Office since the June 15 letter was sent by ordinary mail. A protester makes use of the mails at its own risk, and delay or loss in the mails does not serve as a basis for reviewing a request for reconsideration that has not complied with the timeliness requirements in our Regulations. See Sioux Falls Shopping News--Recon., B-236421.2, Oct. 30, 1989, 89-2 CPD ¶ 394. Absent proof to the contrary, we consider ETA's request for reconsideration of the May 29 dismissal to have been filed only on September 10; it therefore is untimely and will not be considered.

In any case, we note that a protester has the obligation to include in its protest all the information needed to demonstrate its timeliness, 4 C.F.R. § 21.2(b); the protester must provide information establishing the timeliness of the protest when on its face the protest appears untimely. Adrian Supply Co.--Recon., B-242819.3, July 17, 1991, 91-2 CPD ¶ 64. By failing to initially advise our Office that its protest was based on receipt of a copy of PRC's contract, rather than on the earlier debriefing referenced in the protest, ETA assumed the risk that its protest would be dismissed as untimely. ETA's

subsequent furnishing of the information upon which the timeliness of its protest depended does not provide a basis for reconsidering our dismissal of the protest. Id.; see 4 C.F.R. § 21.2(b).

The request for reconsideration is dismissed.

  
John M. Melody  
Assistant General Counsel