

Office of the General Counsel

B-227511.3

October 1, 1987

The Honorable Anthony C. Beilenson
Member, House of Representatives
11000 Wilshire Boulevard
Los Angeles, California 90024

Dear Mr. Beilenson:

This responds to your September 10, 1987, request that we reevaluate our July 2 dismissal of the bid protest filed in our Office by Creighton & Creighton, Inc., under a solicitation issued by the Army Corps of Engineers, Fort Belvoir, Virginia.

In our decision, a copy of which we furnished to you on July 28, we dismissed Creighton's protest of the rejection of its offer as late. We found that the paramount reason the offer was delivered after the closing date for proposal receipt was mishandling by Federal Express, to which Creighton had given the offer for delivery to the Corps, and not any government action. We further stated that if Creighton did not think it had been given enough time to prepare an offer, the firm should have so protested before the closing date, pursuant to our Bid Protest Regulations. We pointed out in this last regard that because the procurement regulations do not provide for oral protests, Creighton's pre-closing conversations with the contracting officer were not relevant to the protest's timeliness under our Regulations.

Your current request is based on the contents of an August 24 letter to your office from Mr. James Ragan on Creighton's behalf, which is enclosed with your letter. We note here that, under our Bid Protest Regulations, a request that we reconsider a bid protest decision must be filed within 10 working days after the basis for the request is known, which generally means receipt of the decision. Creighton has not filed such a request.

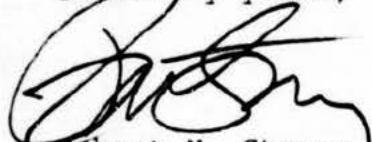
In any case, in his letter Mr. Ragan expressly concedes that Federal Express' mishandling of Creighton's offer does not excuse its late arrival, although he notes that Creighton is

continuing to pursue the matter with the Corps, apparently with respect to the degree of competition the Corps obtained. Nevertheless, Mr. Ragan does raise two matters concerning our comments about the protest's timeliness. First, Mr. Ragan notes that, notwithstanding our statement that Creighton should have protested before the closing date, the Corps currently is considering post-closing protests by two firms that did not receive the solicitation until after that date. However, since those protests apparently have been filed with the Corps, we have no knowledge of their contents or merits, although we do note that Creighton, unlike those firms, in fact received a copy of the solicitation before the closing date and therefore was on direct notice of when to submit its offer. Further, there is nothing in the procurement regulations that would preclude a contracting agency from itself responding to an untimely protest.

Second, Mr. Ragan suggests that because the contracting officer, in response to Creighton's oral request that he extend the closing date, orally refused to do so, Creighton's request was then and now should be viewed as a proper bid protest for timeliness purposes. There is no legal merit in Mr. Ragan's position, however. As we indicated in our decision, because the procurement regulations do not allow for oral protests an oral protest has no effect for purposes of our timeliness rules, so that the fact that the contracting officer may have considered, and rejected, Creighton's orally-expressed concern is irrelevant.

If you need further information, my telephone number is (202) 275-9740.

Sincerely yours,



Robert M. Strong
Deputy Associate
General Counsel