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**GAO**

United States General Accounting Office  
Washington, DC 20548

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Office of  
General Counsel

In Reply  
Refer to: -158766

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DLG 01155

MAR 13 1979

Attention: Terry D. Miller  
President

Gentlemen:

Reference is made to your request for our comments on several [problems you have found in the bid protest process]

You contend that at times the agency will not give a "yes" or "no" answer to a problem and will subsequently refer the matter to a higher authority. If the matter is referred to a higher authority you believe that there is a risk to the protester of having the 10-day filing rule "thrown in his face." You contend that most agencies "trot the 10-day rule out everytime rather than dealing with an issue on the merits." You also state that when a protest is still pending before the contracting agency and a concurrent protest is filed with GAO, the agency will, more than likely, believe that the "battle lines are drawn" and stop any further review.

You then refer to the General Services Administration's actions regarding ADP procurements involving the Brooks Act, 40 U.S.C. § 759 (1976). You contend that although GSA usually comes to an agreement with the "vendor," the agreement is not reached within a 10-day period. Consequently, if the "vendor" files a protest with GAO, GSA will no longer consider the matter is for its review.

Our Bid Protest Procedures (Procedures), 4 C.F.R. part 20 (1978), are intended to provide fair and equitable procedural standards for protection of all parties to a protest. Any interested party in a



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procurement wishing to protest a particular action to the Comptroller General can do so directly within the prescribed time limits of our Procedures. Also, in accordance with our Procedures if the protester chooses to file its protest with the contracting agency initially, and it is filed there within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action, unless the agency imposes a more stringent time, he may appeal the agency's denial of the protest to GAO. That appeal must be filed with GAO within 10 days after actual or constructive notice of initial adverse agency action. Adverse agency action includes:

- (1) award to another firm despite the pending protest;
- (2) acquiescence in, and active support of, continued and substantial contract performance despite the protest; or
- (3) oral advice of denial of the protest.

In the latter case of initial adverse agency action, it is incumbent upon the protester to file its appeal with GAO rather than continue to pursue the matter with a higher authority at the agency or run the risk of its protest being determined untimely.

With regard to your comment that an agency will stop further review of a protest which was initially filed with it if a concurrent protest is filed with GAO, it should be noted that the contracting agency is required to submit a report responsive to the protest filed with GAO. In order for the contracting agency to submit the required response to GAO, further review by the agency is necessary. In this connection, we note that where GSA's views are considered helpful or necessary in an ADP procurement, they may be obtained.

Although your letter suggests a dissatisfaction with the 10-day rule and failure to decide protests on the merits, time limits for filing protests are

necessary to assure that Government procurements are not burdened by untimely protests. Del Norte Technology, Inc., B-182318, January 27, 1975, 75-1 CPD 53. We have stated in prior decisions that:

"\* \* \* To raise a legal objection to the award of a Government contract is a serious matter. At stake are not only the rights and interests of the protester, but those of the contracting agency and other interested parties. Effective and equitable procedural standards are necessary so that the parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process." Service Distributors, Inc. (Reconsideration), B-136495, August 16, 1976, 76-2 CPD 149.

However, our Procedures do permit consideration of untimely protests where issues to procurement practices or procedures are raised, 4 C.F.R. § 20.2(c). The good cause exception generally refers to some compelling reason beyond the protester's control, which prevented it from filing a timely protest. The "significant issue" exception is limited to issues which are of widespread interest to the procurement community (principle of broad application--regardless of the amount of money involved in the procurement--which has not been considered before) and is exercised "sparingly" so that timeliness standards do not become meaningless.

Enclosed is a booklet entitled "Bid Protests at GAO, A Descriptive Guide" which gives a detailed description of the bid protest process at GAO.

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It is hoped the foregoing is responsive to your inquiry.

Sincerely yours,

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Milton J. Socolar  
General Counsel

Enclosure