

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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FILE: B-185103

DATE: May 24, 1976

MATTER OF: Reliable Maintenance Service, Inc.,--request  
for reconsideration

**DIGEST:**

Where request for reconsideration is based on additional facts known to protester at time of filing but not included in original filing, and agency disputes validity of "new" facts, prior decision that protest was untimely filed is affirmed since protester has not carried burden of affirmatively proving case.

By letter dated December 10, 1975, Reliable Maintenance Service, Inc. (Reliable), has requested reconsideration of our decision Reliable Maintenance Service, Inc., B-185103, December 8, 1975, 75-2 CPD 374, in which we refused to consider the merits of Reliable's protest based on the fact that it was untimely filed.

Briefly stated, the facts of Reliable's protest were as follows: By letter to our Office dated November 18, 1975, filed November 21, 1975, Reliable protested the award of a contract by the Department of the Air Force to any other offeror under request for proposals (RFP) 33600-75-R-0389 for the procurement of hospital aseptic management services. Reliable stated that the contracting officer notified it by letter dated September 29, 1975, that its proposal was determined to be unacceptable because of its failure to satisfy the experience requirement of the RFP. Reliable protested this determination and the alleged restrictiveness of the RFP to the Air Force on November 7, 1975, and to our Office, as previously noted, by letter dated November 18, 1975.

Pursuant to sections 20.2(a) and (b) of our Bid Protest Procedures, 40 Federal Regulations 17979 (1975), we held Reliable's protest to our Office to be untimely because Reliable had not protested to the Air Force within 10 working

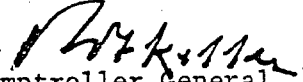
days from the time it knew or should have known of the grounds for its protest. From the record then before us, it appeared that Reliable knew of the grounds for its protest as a result of the September 29, 1975, Air Force letter. Hence, Reliable's protests to the Air Force on November 7, and subsequently to our Office on November 21, 1975, were not filed in a timely manner.

In its request for reconsideration, Reliable has indicated that it failed to include all of the relevant facts in its protest letter to our Office of November 18, 1975. Specifically, Reliable now alleges that in an October 7, 1975, telephone conversation between Mr. John A. Conner, General Manager of Reliable, and the Air Force contracting officer, the contracting officer agreed to reconsider Reliable's proposal based on the submission of additional information going to the question of Reliable's previous experience with hospital aseptic management services (submitted by Reliable on October 8, 1975). Reliable further alleges that the matter was not finally settled by the Air Force until November 7, 1975, when the contracting officer informed Reliable in a telephone conversation that its offer was definitely and finally unacceptable.

For its part, the Air Force agrees that a telephone conversation ensued on October 7, 1975, between Reliable and the contracting officer, but denies that the contracting officer agreed to reconsider Reliable's proposal. The Air Force contends that its letter of September 29, 1975, established that Reliable's offer was definitely unacceptable. Consequently, the Air Force argues that Reliable's protests to it on November 7, 1975, and to our Office on November 21, 1975, were untimely pursuant to our Bid Protest Procedures, supra.

The protester has the burden of affirmatively proving his case. We do not believe that burden has been met where conflicting statements of the protester and the contracting agency constitute the only evidence. Therefore, Reliable's protests, first filed with the contracting agency and our Office on November 7 and 21, 1975, respectively, are untimely.

Accordingly, our decision of December 8, 1975, is affirmed.

Deputy   
Comptroller General  
of the United States