

DOCUMENT RESUME

02993 - [A2013095]

[Untimely Request for Reconsideration]. B-186939. July 14, 1977.
2 pp.

Decision re: Department of Commerce; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: International Finance and Economics.
Authority: 4 C.F.R. 20.9(b). 55 Comp. Gen. 1281.

Agency request for reconsideration of a prior decision filed 4 months after the basis for the request was known or should have been known was untimely and was not considered on merits. The request for reconsideration despite untimeliness was denied because there is no provision in Bid Protest Procedures to waive time limit. (Author/QM)

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DECISION



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

FILE: B-186939

DATE: July 14, 1977

MATTER OF: Department of Commerce - Request for
Reconsideration

DIGEST:

1. Agency request for reconsideration of prior decision filed 4 months after basis for request was known or should have been known is untimely under 4 C.F.R. § 20.9(b) (1977) and will not be considered on merits.
2. Request that untimely request for reconsideration be considered because it allegedly raises issues significant to procurement practices is denied because there is no provision in Bid Protest Procedures to waive time limit. Fact that discretionary power to waive time limit for significant issue raised by initially untimely filed bid protest was excluded in case of reconsideration indicates that discretionary waiver was not intended to apply in latter situation.

By letter dated May 24, 1977, the Department of Commerce (Commerce) has requested that we reconsider our decision, International Finance and Economics, B-186939, January 27, 1977, 77-1 CPD 66. The basis for the request is Commerce's belief that the decision was premised upon erroneous factual and legal conclusions.

Section 20.9 of our Bid Protest Procedures (4 C.F.R. part 20 (1977)) sets forth the conditions under which our Office will consider requests for reconsiderations. As pertinent, it provides:

"(b) Request for reconsideration of a decision of the Comptroller General shall be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term 'filed' as used in this section means receipt in the General Accounting Office."

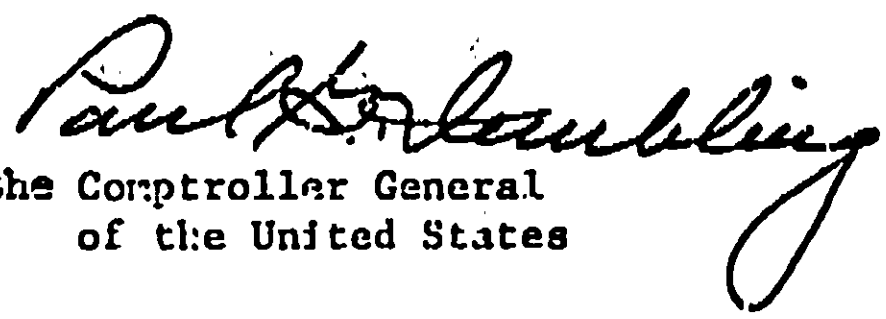
02993

B-186939

Commerce recognizes the infirmity attached to its request, but attributes its tardiness to the "workload of the Department." Notwithstanding its delay of approximately 4 months in filing, Commerce now requests that we waive our time limit because of what Commerce terms "significant issues concerning agency procurement practices * * *."

There is no provision in our Procedures for waiving the time requirements applicable to requests for reconsideration. However, we assume that Commerce's reference to "significant issues" is for the purpose of applying a concept similar to § 20.2(c) of our Procedures. That section provides that the Comptroller General for good cause shown, or where he determines that a protest raises issues significant to procurement practices, may consider any protest which is not timely filed. The inference to be drawn from the inclusion of a discretionary power in one section of our Procedures vis-a-vis the exclusion of that same discretionary power in another circumstance is that there is no intent that the power apply where excluded. Moreover, we are unaware of any case since the adoption of our Procedures where the time limit applicable to request for reconsideration has been waived. Cf. Environmental Protection Agency - request for modification of GAO recommendation, 55 Comp. Gen. 1281 (1976), 76-2 CPD 50.

Therefore, the request for reconsideration, being untimely filed, is not for consideration on the merits.


For the Comptroller General
of the United States