DECISION

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

FILE: B-208964.5 **DATE:** May 31, 1983

MATTER OF: Acme Reporting Company, Inc.--Reconsideration

DIGEST:

Decision is affirmed on reconsideration in absence of any showing that earlier decision was based on errors of fact or law.

Acme Reporting Company, Inc. (Acme), has requested reconsideration of two of our decisions, Acme Reporting Company, Inc.--Reconsideration, B-208964.4, April 1, 1983, 83-1 CPD ____, and National Labor Relations Board - Request for Advance Decision; Acme Reporting Company, Inc., B-208964, B-208964.2, March 1, 1983, 83-1 CPD 206.

In Acme Reporting Company, Inc.--Reconsideration, supra, we dismissed as untimely Acme's request for reconsideration based on information that our decision was received by Acme's attorneys on March 4, 1983. We have reviewed documentation submitted by Acme which indicates that our decision was received by Acme's attorneys on either March 8 or 9. In this circumstance, doubt as to timeliness is resolved in favor of the protester. See Rolm Intermountain Corporation, B-206327.4, December 22, 1982, 82-2 CPD 564. Therefore, we reverse our prior dismissal, and we will consider Acme's request for reconsideration of our decision.

Based on the following, we affirm our prior decision.

In our decision, we held that the rejection of Acme's bid, based on the company's submission of an unreasonable price for copies of transcripts to the public, was improper because the furnishing of copies to the public was not made the subject of a binding work requirement. Our recommendation was that the requirement be resolicited unless the National Labor Relations Board (NLRB) intended to provide copies of the transcripts to the public, in which event award could be made to Acme.

Acme alleges that our decision was erroneous for the following reasons: (1) GAO erroneously assumed that it was NLRB's intent to require the contractor to provide copies to the public instead of NLRB's intending that either the NLRB or the contractor would provide the copies; (2) Even if the invitation for bids (IFB) was erroneous for failing to express NLRB's intent to require the contractor to provide this copy service, the GAO is estopped from finding error because of prior GAO decisions which did not question similar IFB provisions; (3) It does not follow that the issue of the reasonableness of Acme's price is rendered academic even if the IFB was properly found to be defective for failing to express NLRB's true intent; and (4) Acme should have received award under the original IFB.

NLRB's Intent

Acme argues that NLRB's actual intent is to allow either itself or the contractor to sell duplicate copies to the public as stated in the IFB. It is our understanding (which Acme does not contradict) that the contractor, rather than NLRB, historically has provided copy service to the public and that NLRB has not provided (and does not intend to provide) this service regardless of the theoretical right reserved by the NLRB in the original IFB to provide this service. On this point, we think it is important to note that NLRB has not contradicted our decision's statement of NLRB's actual intent regardless of the wording of the original IFB. Absent an express statement from NLRB that it intended to provide this copy service, we consider that the IFB was defective for failing to contain an express requirement that the contractor provide the service.

Estoppel Argument

We reserve the right, on our own motion, to raise an objection to an illegal or an improper contracting procedure or provision at any time during our consideration of a bid protest. Thus, we reject the estoppel argument.

Was Acme's Price Reasonable?

Acme alleges that the question of the reasonableness of its price has not been rendered academic because four bidders submitted prices for this copy service on the assumption that the service would be made the subject of a contract.

Regardless of the number of bidders who erroneously thought that the bids which they submitted for this service would result, upon NLRB's acceptance, in a binding contract for the service, this circumstance does not affect our conclusion that this result could not arise under the wording of the original IFB. Thus, we consider this issue to be academic.

Award Under Original IFB

Finally, Acme insists that it should have received the award under the defective IFB; alternatively, Acme argues that we may not permit NLRB to award to Acme without the public copy service requirement since this "would result in Acme receiving award of a very different contract from that which it bid because its opportunity to make a reasonable profit on [this service] would be totally eliminated."

Award may be made under a defective IFB, as issued, if award would serve the actual needs of the Government and would not prejudice other bidders. See Seaward International, Inc., B-199049, January 16, 1981, 81-1 CPD 23. But award to Acme (or any other bidder) under the original IFB simply would not have served NLRB's needs since the contractor would not have been legally bound to furnish the required public copy service. Moreover, it is our understanding that NLRB is not, in fact, contemplating an award to Acme with the public copy service deleted. Therefore, Acme's alternative argument is academic and will not be addressed.

We conclude, therefore, that Acme has not shown that our decision contained any errors of fact or law. In this circumstance, we find that there is no basis to overturn our prior decision.

for Milton J. Socolar
Comptroller General
of the United States

DECISION

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

FILE: B-211622 **DATE:** May 31, 1983

MATTER OF: Equipo Y Construcciones Aransu, S.A.

DIGEST:

Protest received more than 10 working days after notice of rejection of bid is untimely and will not be considered on the merits.

Equipo Y Construcciones Aransu, S.A. (Equipo), protests the Department of the Army rejection of its bid under invitation for bids No. DAKF71-83-R-0035.

Section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. § 21.2 (1983), requires that a protest be received in our Office within 10 working days after the basis for protest is known or should have been known, whichever is earlier. The protester states that notice of the rejection was received on April 11, 1983. The protest, however, was not received in our Office until April 27, 1983. Since the protest was received beyond the 10-day period, the protest is untimely and will not be considered on the merits. EAI Corporation, B-208808, September 15, 1982, 82-2 CPD 232.

We dismiss the protest.

for Harry R. Van Cleve
Acting General Counsel