

Coker
15139 +

DECISION



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

FILE: B-197859

DATE: October 8, 1980

MATTER OF: U.S. Financial Services, Inc.--
[Request for Reconsideration]

DIGEST:

Fact that protester met with contracting agency for clarification of reason for rejecting its proposal conveyed by agency less than 10 working days earlier, does not excuse firm's failure to file protest within 10 working days after receipt of initial advice as to reason for rejection.

U.S. Financial Services, Inc. (USFS) requests that we reconsider our decision in U.S. Financial Services, Inc., B-197859, September 4, 1980, 80-2 CPD, in which we dismissed as untimely the firm's protest against an allegedly unwarranted restriction in a solicitation issued by the U.S. Marine Corps to upgrade certain disk controllers and drives. The protested restriction required benchmarking to establish compatibility with the Marine Corps' computer system. USFS, which felt that the requirement was unnecessary and thus imposed on the firm an undue financial burden, refused to conduct the benchmark.

The record showed that USFS was told during a debriefing following the award of the contract to another offeror that USFS' proposal had been rejected because the firm had failed to perform the benchmark. The protest to our Office was dismissed as untimely because it was not filed within 10 working days thereafter as required by section 20.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980). While we noted that USFS met again with the Marine Corps before the 10 day period elapsed, we pointed out that the firm stated at a conference held by our Office that the purpose of that meeting, which USFS requested, was to seek clarification and not to protest to the

~~012353~~ 113523

Marine Corps. We also stated that in our view the protest did not merit consideration under section 20.2(c) of our Procedures, which establishes an exception to our timeliness rules where "good cause" is shown or an issue significant to procurement practices or procedures is involved.

In the request for reconsideration, USFS does not dispute the fact that it became aware of the basis for its protest at the initial debriefing, or that the firm did not actually protest within 10 working days thereafter. Rather, USFS in effect only suggests that since it remained in contact with the Marine Corps during that period, the timeliness rule in section 20.2(b)(2) should have been tolled.

While we recognize that a disappointed bidder or offeror may well consider an agency's initial advice as to the reason for the rejection of the bid or offer to be wrong or otherwise ill-advised, and therefore may seek further explanation or clarification, it nevertheless is obligatory that the protest be filed in accordance with our Bid Protest Procedures. Cf. Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423; Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29. The procedures were published in the Federal Register, and firms therefore are on constructive notice of their contents, including the time limits and other procedural requirements for filing protests. Twycroft, Inc.--Request for reconsideration, B-185126, December 23, 1975, 75-2 CPD 408. They require a protest to be "filed," i.e., received in the contracting agency or the General Accounting Office, within the prescribed period, see sections 20.2(b)(2) and (3), and USFS did not meet that requirement.

The decision is affirmed.



For the Comptroller General
of the United States