

DECISION

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

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FILE: B-217021 **DATE:** March 15, 1985
MATTER OF: McCabe, Hamilton and Renny Company,
Ltd.

DIGEST:

1. A protest filed more than 10 days after the basis for it is known is untimely.
2. A protest concerning rejection of a bid as nonresponsive for inadvertent omission of prices of certain items is not for consideration under the significant issue exception to GAO's timeliness rules since the issue raised is not of widespread interest to the procurement community and has been considered previously.

McCabe, Hamilton and Renny Company, Ltd. protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. N00604-84-B-0129, issued by the Naval Supply Center, Pearl Harbor, Hawaii. The IFB called for bids on stevedoring services on the island of Oahu, based on commodity tonnage, labor, and fringe benefit rates. We dismiss the protest as untimely.

At bid opening on September 24, 1984, the contracting officer noted that the protester's bid did not include fringe benefits, which were required to be priced separately. By letter received at the Naval Supply Center on September 25, McCabe, the incumbent contractor, attempted to submit these rates, stating that it inadvertently had omitted them.

On September 28, the Navy awarded a \$795,023 contract to Hawaii Stevedores as the low, responsive, responsible bidder. At a meeting on October 2, the contracting officer informed McCabe that its lower bid of \$700,231 had been found nonresponsive because of the failure to state fringe benefit rates. McCabe contends that the agency should have permitted it, as the otherwise successful bidder, to

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cure the omission after bid opening. The firm concludes that an award at nearly \$95,000 higher than its own bid violates solicitation provisions stating that no contract will be awarded unless at a "fair and reasonable" price.

Our Bid Protest Procedures require that protests be filed with this Office or the contracting agency within 10 working days after the basis for them is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2 (b)(2) (1984). Here, McCabe knew of its basis of protest no later than October 2, although there is some indication that the firm knew that it might be rejected as early as bid opening. Since the protest was not filed, i.e., received by this Office, until November 2, more than 1 month thereafter, it is untimely, and we will not consider it on the merits.

McCabe argues that even if untimely, its protest should be considered under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c). We will review an untimely protest under this exception only where it involves a matter of widespread interest or importance to the procurement community that has not been considered on the merits in a previous decision. Sequoia Pacific Corp., B-199583, Jan. 7, 1981, 81-1 CPD ¶ 13. The exception is strictly constructed and sparingly used to prevent our timeliness rules from being rendered meaningless. Dixie Business Machines, Inc., B-208968, Feb. 7, 1983, 83-1 CPD ¶ 128.

The protest here does not fall within the exception: an agency's rejection of a bid as nonresponsive for inadvertent omission of price items is not of widespread interest to the procurement community, and it has been the subject of numerous decisions. See, for example, Indus Group, B-212713, Sept. 12, 1983, 83-2 CPD ¶ 315; Central Certificate Registry, Inc., et al., B-209089, Mar. 28, 1983, 83-1 CPD ¶ 314.

The protest is therefore dismissed.

Ronald Berger
 Ronald Berger
 Deputy Associate
 General Counsel