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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-205321

November 9, 1981

The Honorable John C. Danforth
United States Senate

Dear Senator Danforth:

This is in reply to your letter of October 15, 1981, concerning a protest by one of your constituents, Mr. Ronald T. Hagen, President of Trans Ex Corporation, alleging improprieties in the way procurement officials at Ft. Leonard Wood, United States Department of the Army, handled a recent procurement for renting garbage trucks.

We are unable to consider this matter on the merits because your constituent's protest was untimely filed. Mr. Hagen knew of the alleged improper actions, at the latest, on September 25, 1981, when he met with an official at the contracting activity and submitted his company's bid. The protest was forwarded to our Office through the Office of Management and Budget (OMB) and your office. However, it was not filed in the General Accounting Office until October 20, 1981, or almost 1 month after the basis for protest was known to your constituent. Our Bid Protest Procedures require that protests be filed in our Office within 10 working days after the basis for protest is known if they are to be considered on their merits. 4 C.F.R. § 21.2(b)(2) (1981). Filing of the protest with OMB does not satisfy this requirement. Therefore, Trans Ex Corporation's protest was untimely received by us.

Concerning the applicability of our Procedures to protests filed by or referred to our Office by Members of Congress, it has been decided that no protest will be considered on its merits if untimely filed, unless one of the exceptions in section 21.2(c), infra, is applicable regardless of the source of the protest. This policy was adopted because our Office can best function if it is permitted to decide an issue while it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time

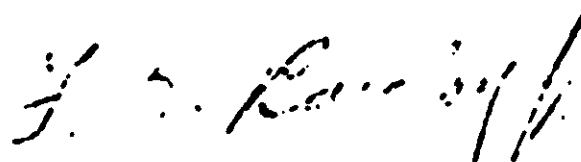
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for the filing of a protest. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this would suggest to the procurement community that the timeliness provisions of our procedures could be circumvented by submitting the protest through a Member of Congress.

While section 21.2(c) of our Procedures provides that for good cause shown or where there are issues significant to procurement practices or procedures, our Office may consider any protest which is not timely filed, we do not find these exceptions applicable here. See 52 Comp. Gen. 821 (1973). Therefore, the protest will not be considered on the merits.

The correspondence you sent us is returned herewith as you requested.

Sincerely yours,



H.R. Harry R. Van Cleve
Acting General Counsel

Enclosure