

DOCUMENT RESUME

03609 - [A25737J0]

[Untimely Submission of Additional Protest Details]. B-189343.
September 12, 1977. 3 pp.

Decision re: California National Air Service, Inc.; by Paul G.
Dembling, General Counsel.

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: Forest Service.

Authority: 4 C.F.R. 20.2(c, d). 54 Comp. Gen. 97. 54 Comp. Gen.
111. 52 Comp. Gen. 20. 52 Comp. Gen. 23. B-187395 (1977).
E-186719 (1976). E-186999 (1977). B-187444 (1976).

The counsel for the protester requested consideration of the protester's objection to a bid rejection. Although the protest was timely filed, the file on the case was closed due to the protester's failure to furnish a detailed statement of the specific grounds of its protest within the period provided. Good cause for delay in furnishing the information was not shown, and the protest did not raise significant issues. The protest was properly dismissed as untimely. (Author/SC)

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DECISION



**THE COMPTROLLER
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-189343 **DATE:** September 12, 1977
MATTER OF: California National Air Service, Inc.

DIGEST:

Where CAO allowed time extension to protester to furnish detailed statement on specific grounds of protest but statement was furnished 9 working days late--and 26 working days after protest had been filed--protest is dismissed. Good cause for delay in furnishing detailed statement is not shown, nor does protest involving rejection of bid for air tanker services raise significant issues within meaning of section 20.2(c) of Bid Protest Procedures, which although applicable to timely filing of protests is considered pertinent here.

By letter to our Office dated July 22, 1977, counsel for California National Air Service, Inc. (CNAS), requested that we consider CNAS's protest concerning the rejection of its bid on June 6, 1977, under invitation for bids No. 49-77-05, issued by the United States Forest Service. The protest was initially filed by CNAS on June 15, 1977. We had closed our file on the protest on July 14, 1977, due to the protester's failure to furnish a detailed statement of the specific grounds of its protest.

CNAS's initial statement of protest, filed June 15, 1977, merely objected on the grounds of a "prejudiced decision"; "no pre-award survey"; "denied rights of inspection"; "declared nonresponsive without benefit of hearing"; and "provided conflicting information * * * in regards to Air Tanker Selection Board." By letter of June 24, 1977, we requested the protester to furnish additional details of the specific grounds of its protest within 5 working days after receipt of our letter, as provided in section 20.2(d) of our Bid Protest Procedures (4 C.F.R. part 20 (1976)). CNAS advised that it received our letter on June 27, 1977. The protester requested, and was granted, an extension of 4 additional working days. However, the protester failed to mail or otherwise furnish its statement of the specific grounds of protest within the 9 working days allowed. The details of CNAS's protest were not mailed until July 23, 1977--26 working days after its protest had been filed and 9 working days after the expiration of the time allowed to CNAS to mail its detailed statement of protest.

CNAS's counsel contends there is "good cause" for the delay in furnishing the details of the protest because during the period from June 6 to July 15, CNAS was working full time to get its aircraft inspected by the Forest Service in order to show that it qualified as an approved air tanker, and that at the same time CNAS was also involved in seeking help from its Congressman. Also, it is stated that CNAS has been experiencing some financial difficulties, was making strenuous efforts to obtain other contracts, and therefore did not have sufficient time to pursue this protest. Also, counsel states that CNAS--a young corporation inexperienced in preparing protests--sought the assistance of counsel, who was not able to transmit the details of the protest to our Office until July 23, 1977.

Our Office has indicated that to protest the award of a Government contract is "a serious matter," and that our timeliness standards for the filing of protests are strictly construed in order to attempt to insure equitable and prompt resolution of protests. Cessna Aircraft Company, et al., 54 Comp. Gen. 97, 111 (1974), 74-2 CPD 91. However, an untimely protest may be considered "for good cause shown." 4 C.F.R. § 20.2(c) (1976). "Good cause" refers to "* * *.some compelling reason, beyond the protester's control * * *" which prevented it from filing a timely protest. 52 Comp. Gen. 20, 23 (1972). While the good cause exception has reference to consideration of a protest which has not been timely filed, we believe it is also pertinent to a situation like the present case where the protester has failed to furnish the details of its protest in a timely manner.

We have held several times that consultation with counsel is not a valid basis for extending the protest filing time limits. Kappa Systems, Inc., B-187395, June 8, 1977, 56 Comp. Gen. _____, 77-1 CPD 412; Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256. There is no requirement that a protester be represented by an attorney. Also, our Bid Protest Procedures specifically provide that "No formal briefs or other technical forms of pleading or motion are required * * *," 4 C.F.R. § 20.1(d). All that is required is that a protester state its objections in sufficient detail in writing in a timely manner. Where an initial statement of protest does not provide details of the specific grounds of protest, our Office will request an additional statement from the protester, because the contracting agency is not in a position to intelligently respond to the protest unless and until it knows the details of the protester's objections. Cf. Radix II, Inc., B-186999, February 8, 1977, 77-1 CPD 94.

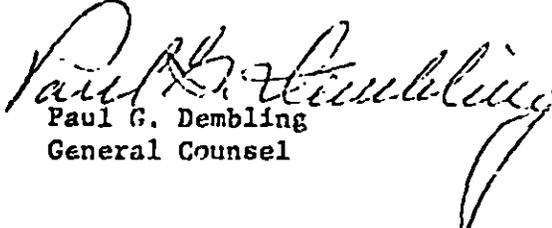
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In the present case, the protester was allowed 9 working days to mail a statement of the details of its protest--4 working days beyond the normal time limit (4 C.F.R. § 20.2(d)). We do not believe the reasons cited by counsel for failing to comply with this limit show that the failure was due to compelling circumstances beyond the protester's control. The actual discussion of the details of protest in the statement mailed on July 23, 1977, is only about three and one-half pages in length. No legal precedent is cited. Essentially, CNAS's complaint appears to be directed at the contracting officer's determination that its bid was nonresponsive to the terms of the IFB because the bid did not offer an approved air tanker, and at the contracting officer's refusal to reverse his position--events which apparently took place prior to June 15, 1977. We do not see why the protester could not have prepared and mailed a brief written statement to this effect within the 9 working days allowed.

Counsel also contends that the protest should be considered because it involves "significant issues." An untimely protest may be considered where our Office determines that it raises "issues significant to procurement practices or procedures." 4 C.F.R. § 20.2(c). Counsel maintains that the significant issues involve contradictory positions by the Forest Service on the testing and approval of air tankers; disregard by the Forest Service of the terms of the IFB; and alleged discriminatory and unfair trade practices in violation of the antitrust laws.

A "significant issue" refers to one involving a procurement principle of widespread interest. 52 Comp. Gen., *supra*. We have indicated that the significant issue exception must be exercised sparingly, if our timeliness standards are not to become meaningless. Catalytic, Incorporated, B-187444, November 23, 1976, 76-2 CPD 445. We do not regard the issues in the present case as involving procurement principles of widespread interest.

In view of the foregoing, the protest is dismissed.


Paul G. Dembling
General Counsel