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DECISION



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

FILE: B-203352.2

DATE: December 21, 1981

MATTER OF: Racal-Milgo Government Systems, Inc.--
Reconsideration

DIGEST:

Prior decision is affirmed because the protester has not shown any errors of law or fact in decision's conclusion that its protest against a sole-source award was untimely since the protest was not filed within 10 working days after the protester learned of the agency's justification for the sole-source award. Further, the matter does not fall within GAO's exceptions to the timeliness requirements.

Racal-Milgo Government Systems, Inc. (R-M), requests reconsideration of our decision in the matter of Racal-Milgo Government Systems, Inc., B-203352, November 9, 1981, 81-2 CPD _____, which dismissed, as untimely, R-M's protest against the award of a contract on a sole-source basis to Codex Corporation by the Small Business Administration (SBA) for the installation, lease, and maintenance of a data communications system.

R-M contends that the protest is not untimely because even when the protest was filed here, R-M was not in possession of all the information required to form a basis of protest; alternatively, R-M argues that we should consider the merits of its protest because the protest raises significant issues regarding procurement practices or procedures.

After considering R-M's contention, we affirm the prior decision and conclude that the protest does not present a significant issue within the meaning of 4 C.F.R. § 21.2(c) (1981).

The relevant facts are not disputed. R-M became aware of the SBA's need for improvement in its data communication system and R-M submitted an unsolicited proposal to SBA to satisfy the need. R-M proposed a multiport system. When R-M learned that SBA made award to Codex, R-M asked SBA for certain information regarding the selection of Codex.

On April 27, 1981, R-M received documents from the SBA explaining SBA's basis for selecting Codex. The documents revealed that SBA determined that Codex was the only known source of a multiplexer system, which SBA considered to be the only type of system to satisfy SBA's unique requirements.

On May 18, 1981, R-M protested here that R-M could have proposed a multiplexer system with the same capabilities as the Codex system and probably at a lower life cycle cost than the Codex system. SBA did not disclose to R-M the life cycle cost of the Codex system.

R-M's May 18, 1981, submission insisted that SBA withheld important information making it impossible for R-M to adequately state its basis for protest. R-M filed notice that it was appealing SBA's denial of certain information regarding what SBA bought at what price. R-M argued that SBA erred in concluding that R-M did not have the capability to propose on the same basis as Codex and in not giving R-M the opportunity to so propose. In view of R-M's insistence that vital information was withheld by SBA and the other very serious allegations of wrongdoing by SBA officials, we requested SBA to respond to the protest.

On July 16, 1981, SBA denied R-M's appeal for the requested information. On August 5, 1981, R-M appealed SBA's denial to the United States District Court for the District of Columbia. On August 10, 1981, SBA responded to R-M's protest arguing that the protest was untimely and explaining that SBA was not aware until R-M protested here that R-M could have proposed a system with capabilities similar to the Codex system. In reply, by letters dated August 31 and October 21, 1981, R-M argues that SBA was aware that R-M could

propose a system like the Codex system because R-M's representative expressly told SBA's representative of R-M's multiplexer system capability.

Accordingly, the November 9, 1981, decision concluded that, from the perspective of the complete record, R-M's basis of protest was essentially that SBA erroneously determined that Codex was the only source for a multiplexer system, in part, because SBA actually knew that R-M could propose a system with the required capabilities. Thus, on April 27, 1981, R-M knew or should have known its basis of protest. The precise details of what SBA ordered and at what cost were irrelevant since R-M already knew why SBA selected Codex. In our view, R-M needed no other information to form its basis of protest. Therefore, we held that R-M's protest was untimely under 4 C.F.R. § 21.2(b)(2) (1981), because the matter should have been filed within 10 working days after R-M first learned of SBA's justification for the sole-source award to Codex.

On reconsideration, R-M argues that even on the date reconsideration was requested, SBA continued to withhold some information with respect to unit pricing and other aspects of the Codex contract. R-M states that, under these circumstances, our decision compels disappointed offerors to file protests based on a suspicion that the agency acted improperly and before knowing any of the relevant details of the contract. Alternatively, R-M argues that the protest should be considered on the merits under 4 C.F.R. § 21.2(c) (1981) because R-M has shown good cause for filing when it did and because the protest raises significant issues regarding procurement practices or procedures.

First, while SBA may not have released all the details on the specific Codex equipment purchased and on the specific unit prices, the only information R-M needed to form its basis of protest was in R-M's possession on April 27, 1981. Thus, since R-M did not protest here within 10 working days of that date, R-M's protest was untimely.

Second, the circumstances of this situation do not fall within the good cause exception to our timeliness requirements (4 C.F.R. § 21.2(c) (1981)). We reserve the

good cause exception for situations where some compelling reason beyond the protester's control prevents the filing of a timely protest. See, e.g., Comtech Laboratories, B-196755, April 10, 1980, 80-1 CPD 267; Policy Research Incorporated, B-200386, March 5, 1981, 81-1 CPD 172. Clearly, this was not R-M's situation.

Third, we do not consider the alleged impropriety raised by R-M to be significant within the meaning of section 21.2(c) because the issue presented is not of widespread interest to the procurement community, it does not affect a broad class of procurements, and it does not go to the heart of the competitive procurement process. See Dataproducts New England, Inc., et al., B-199024, January 9, 1981, 81-1 CPD 16.

Accordingly, since R-M has presented no new evidence warranting modification or reversal of the prior decision, the November 9, 1981, decision is affirmed.

Harry D. Van Cleve

For Comptroller General
of the United States