

DECISION

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

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FILE: B-211991**DATE:** November 17, 1983**MATTER OF:** Hydro Research Science, Inc.**DIGEST:**

Where a firm submitted an unsolicited proposal for a technical study, its protest based on its exclusion from a competitive procurement for the study and alleged agency mishandling of its proposal is untimely since the firm failed to diligently pursue the information on which its protest was based after being notified that a contract for the study had been awarded to another firm; a failure to diligently pursue information on which a protest may be based renders a subsequent protest based on that information untimely.

Hydro Research Science, Inc. protests the Panama Canal Commission's award of contract number CC-2-149 to LaSalle Hydraulic Laboratory, Limited. This was an architect and engineering (A&E) services contract for a hydraulic model study on proposed fill-spill valves in the miter gates of the Panama Canal locks. Hydro principally contends it was treated unfairly by the Commission because, although it had submitted an unsolicited proposal for performing this study, it was not afforded an opportunity to fully participate in the subsequent competition. We dismiss the protest.

The undisputed facts are as follows. While performing another study for the Commission in late 1980 and early 1981, Hydro discussed with Commission officials a possible study to determine the feasibility of installing fill-spill valves in the miter gates of the canal. By reducing the time required to fill the lock chambers, these valves would increase the canal's capacity to handle transiting ships. A physical model study would permit the examination of problems with the valves which could not be analyzed theoretically. On September 23, 1981, based on these earlier discussions, Hydro submitted to the Commission an unsolicited proposal assessing the design of the

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proposed valves. The Commission acknowledged receipt of the proposal by letter to Hydro dated October 30, but Hydro was not advised until after the subject contract was awarded what further actions the Commission took regarding its proposal.

The Commission did decide that a model study was practicable, but that these A&E services would have to be procured competitively in accordance with the Brooks Act, 40 U.S.C. § 541 et seq. (1976), and the implementing regulations, Federal Procurement Regulations (FPR) Subpart 1-4.10. The Brooks Act states the federal policy for procurement of A&E services. After conducting an initial review of on-hand information to determine preliminarily which firms were qualified to perform the study, the Commission sent letters (dated June 9, 1982) announcing the procurement, along with a brief synopsis of the problem, to three firms: LaSalle, St. Anthony Falls Hydraulic Laboratory, and Stevens Institute of Technology. The Commission did not send a copy of the letter to Hydro since it considered that firm's then 9-month-old unsolicited proposal sufficiently detailed for a thorough evaluation under the evaluation criteria.

All three solicited firms responded with proposals which, along with Hydro's unsolicited proposal, were evaluated by an A&E selection board appointed for that purpose. The Board rated LaSalle as best qualified among the four firms to perform the services. Hydro was rated third. Based on the Board's findings, the Commission initiated negotiations with LaSalle and made award to that firm on March 16 at a price of \$172,600.

By letter dated March 21, 1983, the Commission informed Hydro and the other firms that an A&E contract had been awarded to LaSalle for a "Hydraulic Model Study on Fill-Spill Valves in Miter Gates of Panama Canal Locks." Thereafter, on April 19, a Commission representative telephoned Hydro to request use of two models developed by Hydro under a prior contract. At this time, Hydro learned that its unsolicited proposal had been evaluated in a competitive procurement. It protested to the Commission on April 26 and, when no response was received, protested to our Office by letter dated June 2.

Hydro contends the Commission acted improperly in three respects: (1) it did not notify Hydro of the procurement and give it the same chance the other firms had to submit an up-to-date proposal; (2) it violated regulations requiring prompt, comprehensive evaluation of unsolicited proposals; and (3) it incorporated portions of Hydro's unsolicited proposal in the June 9, 1982 notice sent to the other firms.

It is the Commission's position, and we agree, that the protest is untimely.

Our Bid Protest Procedures require that protests be filed in our Office within 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(b)(2) (1983). While notice of award of a certain contract by itself does not necessarily provide knowledge of the basis of protest, it is incumbent upon a potential protester to diligently seek whatever relevant information is needed to determine whether a basis for protest exists. Policy Research, Incorporated, B-200386, March 5, 1981, 81-1 CPD 172. In no case may a potential protester sit idly by and, after allowing some significant period of time to pass, decide to seek information that could have been obtained earlier. A protester's failure to diligently pursue the matter by seeking the necessary information within a reasonable time requires rejection of the protest as untimely. Fowler's Refrigeration and Appliance, Inc., B-201389, March 25, 1981, 81-1 CPD 223.

Hydro submitted its unsolicited proposal on September 23, 1981, and although it never received any further word on the proposal (except the Commission's October 30 acknowledgment letter), it never sought any information on the status of the proposal. On or shortly after March 21, 1983, 18 months after submitting its proposal, Hydro received a letter from the Commission with the heading, "Hydraulic Model Study on Fill-Spill Valves in Miter Gates of Panama Canal Locks," which stated in relevant part as follows:

"Negotiations were successfully conducted and concluded for the above-referenced study, and award of the resultant A/E contract will be made to LaSalle Hydraulic Laboratory, Ltd.

"We appreciate your interest in this project, and we trust that you will continue to respond to our requests as actively as you did on this occasion."

The letter heading referred to precisely the model study Hydro treated in its unsolicited proposal, and the body of the letter put Hydro on notice that (1) the Commission had conducted a competitive A&E procurement for this study; and (2) the Commission believed Hydro had participated in the competition. In view of Hydro's interest in competing for this award, this letter should have led it to seek an explanation from the Commission as to both the handling of its unsolicited proposal and its exclusion from the competition. It did not do so. Instead, Hydro waited an additional month without contacting the Commission. In fact, it never did initiate any contact with the Commission until after Commission personnel called about use of the two models in late April. Only then did Hydro raise the questions it could and should have raised in late March. Under these circumstances, we find that Hydro failed to diligently pursue the information on which its protest is based. Its protest, therefore, is untimely and will not be considered on the merits. See Sierra Pacific Airlines, B-205439, July 19, 1982, 82-2 CPD 54.

Although we find the protest untimely, we note that the Commission did not strictly follow the prescribed procedures spelled out in FPR Subpart 1-4.10 in its handling of this procurement. It did not synopsise its requirement in the Commerce Business Daily (FPR § 1-4.1003) and it did not hold discussions, after evaluating the competing firms, with not less than three of the most highly qualified firms (FPR § 1-4.1004-2). Had it done so, the protester may have been able to update the material it had on file with the Commission, which in turn might have improved its chances for a higher rating. The Commission has recognized that "irregularities occurred," however, and we see no need to pursue these deficiencies further.

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The protest is dismissed.

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