Morrow

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DECISION

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

FILE: B-212829.3 **DATE:** April 9, 1984

MATTER OF: John Crane-Houdaille, Inc.--Reconsideration

DIGEST:

Prior decision is affirmed because protester has failed to demonstrate that decision was based upon erroneous interpretation of fact or law or information not previously considered.

John Crane-Houdaille, Inc. (JCH), requests reconsideration of our decision in John Crane-Houdaille, Inc., B-212829, January 20, 1984, 84-1 CPD 89, which dismissed in part and denied in part its protest against the award of a contract to CR Industries (CRI) under request for proposals No. DAAE07-83-R-A306. We affirm our prior decision.

In the protest upon which the decision was based, JCH argued that it was improper to solicit best and final offers because it was told after the receipt of initial offers that it would receive the award and the subsequent change in the procurement technical data should not have prompted the solicitation of best and final offers. Since JCH did not protest this before the closing date for the receipt of best and final offers, we dismissed this protest as untimely. 4 C.F.R. § 21.2(b)(1) (1983).

JCH contends our decision is erroneous in holding that the protest made after the closing date for submitting best and final offers was untimely because the crucial facts forming the basis of the protest were not known and could not have been known before the closing date. In that connection, JCH states that it did not learn until after the closing date that CRI had improperly induced the contracting agency to solicit best and final offers.

JCH therefore argues that the basis of protest could not be deemed "apparent" within the meaning of 4 C.F.R. § 21.2(b)(1) at the time best and final offers were solicited. Furthermore, JCH argues that any doubts concerning the timeliness are resolved in favor of the

protester, citing Dictaphone Corporation, B-196512, September 17, 1980, 80-2 CPD 201 (1980), and that our Office is authorized to make an exception to the timeliness rules where a protest raises issues significant to procurement practices or procedures. 4 C.F.R. § 21.2(c).

Our decision that JCH's protest was untimely was based upon the fact that, when the procuring agency solicited best and final offers because of a change in the procurement technical data, JCH knew that the solicitation was inconsistent with the advice JCH allegedly received before the issuance that it was the low offeror and would receive the award. While JCH alleges that CRI's involvement was not apparent at that time, we believe the procuring agency's inconsistency was sufficient to place JCH on notice of the basis of protest--the alleged impropriety of the agency soliciting best and final offers on the basis of a change JCH did not consider important in the face of advice that award was to be made to JCH. That JCH learned of additional support for the basis of protest after the closing date, that is, CRI's alleged involvement, does not negate the fact that the basis came into existence when the procuring agency solicited best and final offers. In other words, JCH alleges that at the time the request for best and final offers was received it had been told it was the successful offeror and it was JCH's view that no change in the technical data in the solicitation was necessary. In these circumstances, JCH knew or should have known its basis of protest. Therefore, we again conclude that the protest is untimely. Dictaphone Corporation, supra, is not germane to the facts in this case because in that decision the doubt as to timeliness was resolved in favor of the protester because, unlike the case here, the evidence was inconclusive as to the time the protester knew of the basis of protest.

Finally, we do not believe that JCH's protest that CRI improperly induced the contracting agency to solicit best and final offers is of such widespread interest to the entire procurement community as to fall within the significant issue exception to our timeliness rules. Canadian Commercial Corporation--Reconsideration, B-212895.3, March 5, 1984, 84-1 CPD ___.

The protester has failed to demonstrate that our prior decision was based on information not previously considered

or an erroneous interpretation of fact or law. 4 C.F.R. § 21.9(a). Therefore, it is affirmed.

Milton J. Socolar
for Comptroller General
of the United States