

DECISION

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

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FILE: B-215959.2**DATE:** September 11, 1984**MATTER OF:** Ray Service Company--Request for
Reconsideration**DIGEST:**

1. Prior decision finding that protest was untimely because the protest was filed with GAO more than 10 working days after initial adverse agency action on agency-level protest is affirmed where request for reconsideration contains no factual or legal grounds upon which decision should be reversed or modified.
2. Protest of procedural irregularities initially raised on reconsideration, even assuming it is filed timely and factually correct, is denied. Protester has not shown how firm was prejudiced by these irregularities and these procedural deficiencies do not appear to have affected validity of award in this case.

Ray Service Company (RSC) requests reconsideration of our decision in the matter of Ray Service Company, B-215959, Aug. 14, 1984, 84-1 C.P.D. ¶ _____. In that decision, we dismissed RSC's protests against requests for quotations (RFQ) Nos. F08620-84-Q0849 and F08620-84-Q0849A, issued by the Department of the Air Force (Air Force). The Air Force canceled RFQ No. F0862-84-Q0849 and issued a revised RFQ No. F08620-84-Q0849A. RSC protested improprieties contained in both RFQ's.

We concluded that the cancellation of the initial RFQ rendered the protest concerning that RFQ academic. We found RSC's protest against the revised RFQ untimely. The record showed that the Air Force had proceeded with the closing without taking corrective action on RSC's protest to the agency. The Air Force action constituted initial adverse agency action under our Bid Protest Procedures and RSC failed to file a protest with our Office within 10 working days of the closing date, the initial adverse agency action, as required under section 21.2(a) of our Bid Protest Procedures. 4 C.F.R. part 21 (1983). We also noted that the fact that the Air Force later formally denied the protest did not alter the firm's responsibility to conform to the filing requirement of § 21.2(a) in protesting to our Office.

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RSC argues that our timeliness rules are unfair and inflexible for a small business such as RSC which does not have ready access to copies of the pertinent government regulations and procedures, or to an attorney. RSC also argues that it was entitled to wait until award of the contract, or until the contracting officer responded to its protest, before filing its protest. In addition, RSC alleges that it has now discovered additional timely bases of protest. RSC alleges the contracting officer failed to publish the RFQ requirement in the Commerce Business Daily (CBD), that he did not synopsize the RFQ after the closing date, and did not wait 15 days from closing for award as allegedly required by the law.

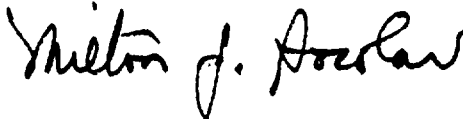
We affirm our decision.

As stated in our prior decision, the essential basis of RSC's protest was that the RFQ statement of work and other RFQ terms and conditions were defective. These points concerned improprieties apparent from the face of the solicitation which RSC clearly had knowledge of prior to the closing date for the RFQ and which RSC, in fact, protested to the agency prior to that date. As stated previously, the Air Force's decision to proceed with the closing date without taking corrective action on the protest constituted initial adverse action under our Bid Protest Procedures and RSC had 10 working days from the closing date to protest to our Office. The operative word here is "initial" and the subsequent events, the award and formal denial of the protest in this case, do not constitute initial adverse agency action. Experimental Pathology Laboratories, Inc., B-211282, July 28, 1983, 83-2 C.P.D. ¶ 136.

In this regard, the time limits set out in our Bid Protest Procedures and their implementation in our bid protest decisions reflect our attempt to balance what we recognize are often conflicting considerations: resolving bid protests in a manner consistent with the orderly and expeditious process of government procurement and affording protesters and interested parties a fair opportunity to present their cases. Bird-Johnson Company--Request for Reconsideration, B-199445.3, Oct. 14, 1980, 80-2 C.P.D. ¶ 275. To that end, we require that allegations of procurement irregularities be raised when corrective action, if necessary, is most practicable and, thus, least burdensome on the conduct of the procurement. The protester has provided no basis upon which to reverse our decision that its protest is untimely.

Also, assuming for the sake of argument that RSC's supplemental bases of protest are filed timely and are factually correct, we do not know how RSC could have been prejudiced by these alleged procedural irregularities. For example, assuming the Air Force improperly failed to publish the requirement in the CBD, RSC had actual knowledge of both of these RFQ's and acted on this notice by protesting the RFQ's to the agency and submitting an offer on the revised RFQ. Similarly, we are not aware of how the other alleged irregularities could have prejudiced RSC in any way, nor has RSC alleged that it was prejudiced. At best, these allegations would appear to be procedural deficiencies which do not affect the validity of the award here. Cf. Technical Fiberglass, Inc., B-213940, Feb. 1, 1984, 84-1 C.P.D. ¶ 137.

Since the firm has not raised any new facts or demonstrated any errors of law that would cause us to reverse or modify our decision, our decision is affirmed. Art Anderson Associates--Request for Reconsideration, B-211546.2, June 8, 1983, 83-1 C.P.D. ¶ 628. We also deny the supplemental protest.


for Comptroller General
of the United States