

DECISION

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

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FILE: B-215922.3 **DATE:** February 19, 1985

MATTER OF: William A. Stiles, III--
Reconsideration

DIGEST:

Prior decision is affirmed on reconsideration where no error of fact or law has been shown.

William A. Stiles, III (Stiles), requests reconsideration of our decision in William A. Stiles, Jr.; Piazza Construction, Inc., B-215922; B-215922.2, Dec. 12, 1984, 84-2 C.P.D. ¶ 658, dismissing in part and denying in part Stiles' protest against the award of a lease to Western Division Investments (Western) under request for proposals (RFP) No. R6-84-20P issued by the Forest Service for office and related space.

We affirm our decision.

In its initial protest, Stiles argued that the method in the solicitation of calculating the "present value per square foot" of space offered as the basis for price evaluation is not reflective of the true costs to the government in the leasing of the space. We declined to consider Stiles' argument because it related to an alleged impropriety apparent on the face of the RFP and was untimely filed (after award) under 4 C.F.R. § 21.2(b)(1) (1984) of our Bid Protest Procedures. Stiles contends that the effect of using the method of calculating the cost of space offered did not become apparent until the offers were actually compared. Stiles has failed to show, however, why the clause in question would not evidence the alleged impropriety on its face. Stiles therefore has not shown error in our determination that this basis is untimely.

Stiles also protested that the awardee's offer had failed to show compliance with the solicitation provision concerning road zoning laws. We held that since compliance with road zoning laws involved a matter of responsibility, it was not required that the offer show compliance and we would not review an affirmative determination of

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responsibility of the awardee by the contracting officer. Stiles now points out that compliance was not obtained until 3 months after award and the project therefore delayed and alleges that the contracting officer should be held responsible for the delay. Since the matter of the contractor's performance under the contract involves a matter of contract administration, it is not for review under our bid protest function. J.P.'s Crown Tours, R-216321, Sept. 24, 1984, 84-2 C.P.D. ¶ 340.

Stiles initially protested that the awardee received technical points for a road which was offered as an option in its technical proposal but, when the awardee's price was evaluated, the cost of the optional road was not included. We denied this protest basis since the road was not a requirement of the solicitation and since the contracting officer stated that no points were awarded for the road. On reconsideration, Stiles argues that since the awardee's technical proposal and maps contained the road without mention that it was an option, this evidences that it had to be evaluated. It is the duty of the protester to affirmatively prove its case. Where, as here, the only evidence consists of a statement by the protester which conflicts with the factual statement by the agency, the protester has not met its burden of proof. Simulators Limited, Inc.--Reconsideration, B-215091.2; B-213046.6, Sept. 25, 1984, 84-2 C.P.D. ¶ 355.

In our initial decision, we regarded Stiles' allegation that the awardee lowered its best and final offer price after receiving inside information from the agency as speculation and not for consideration. Stiles has offered no new evidence, but suggests that GAO should investigate the matter. This Office does not conduct investigations in connection with its bid protest function for the purpose of establishing the validity of a protester's assertions. Easco Tools, Inc.; Easco Hand Tools, Inc., B-212783; B-212907, Jan. 19, 1984, 84-1 C.P.D. ¶ 83.

In its initial protest, Stiles pointed out an error which the Forest Service made in calculating Stiles' present value per square foot price. We found, however, that the error was not prejudicial to Stiles because, when corrected, Stiles gains, at most, only a few price points and its offer would still be over 30 total points lower than the awardee's. On reconsideration, Stiles merely states that the error placed it "at a disadvantage," but has failed to show that the error prejudiced it in the outcome of the procurement. Stiles has failed to show any error of fact or law in our decision in this regard.

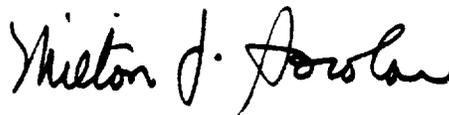
In our prior decision, we found untimely new bases of protest raised in Stiles' comments to the agency report and thereafter because they were not filed within 10 working days of when the bases were known (receipt of agency report). See 4 C.F.R. § 21.2(b)(2) (1984); Tracor Marine Inc., B-207285, June 6, 1983, 83-1 C.P.D. ¶ 604. Stiles questions GAO's practice of strict adherence to its timeliness rules and says that this Office should allow for "delay in the mail."

We regard bid protests as serious matters which require effective and equitable procedural standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a reasonably speedy manner. See ACS Construction Company, Inc., B-216069.2, Dec. 24, 1984, 64 Comp. Gen. _____, 84-2 C.P.D. ¶ 687. Our Procedures are intended to provide for expeditious consideration of objections to procurement actions without unduly disrupting the government's procurement process. ACS Construction Company, Inc., B-216069.2, supra. Our Bid Protest Procedures require that in order for protests to be timely "filed," they must be received in the General Accounting Office by the required dates and are, therefore, strictly construed. See 4 C.F.R. § 21.2(b)(3); The Computer Terminal, Inc., B-217154, Dec. 11, 1984, 84-2 C.P.D. ¶ 657.

Stiles argues that this Office should not have considered the agency report because it took 23 working days after Stiles filed its protest before Stiles received the agency report. Our Bid Protest Procedures provide for a 25-working-day goal for submission of the agency report. See 4 C.F.R. § 21.3(c); Perkin-Elmer, 63 Comp. Gen. 529 (1984), 84-2 C.P.D. ¶ 158. The Forest Service clearly met our 25-working-day goal for submission of its report.

Finally, Stiles complains that the initial decision did not address its comments to a rebuttal letter dated October 26, 1984, sent by the contracting officer to GAO and the protester. Since Stiles' initial comments to the agency report which raised new grounds of protest were untimely received, we did not consider the Forest Service's comments nor Stiles' subsequent comments relative to these untimely raised bases of protest.

Our decision is affirmed.

for 
Comptroller General
of the United States