

DECISION

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

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FILE: B-218180.2 **DATE:** April 17, 1985
MATTER OF: Electro-Methods, Inc.--Reconsideration

DIGEST:

1. GAO affirms dismissal of protest that failed to detail the factual basis for protest, where the request for reconsideration is based on previously-available information, and the protester's failure to include it in the original protest is unexplained.
2. Where a protest appears clearly untimely (as where it involves an alleged award 9 months previously), the protester has the burden of showing that the protest is timely under GAO's Bid Protest Regulations, and GAO will not reverse its decision to dismiss a protest for failure to make such a showing where the protester first introduces previously-available evidence in its reconsideration request, filed more than 1 month after the original protest.

Electro-Methods, Inc. requests reconsideration of our decision dismissing its protest that the Department of the Air Force allegedly awarded a sole-source contract and delivery orders to Pratt and Whitney in May 1984 to supply replacement plate retaining turbines for F-100 engines. The protest did not identify a solicitation or contract number, but was based upon an Air Force "Part Number Advanced Planning List" that merely listed a fiscal year 1985 requirement for 33,588 of the parts at a 1985 value of more than \$4.8 million, and a fiscal year 1986 requirement for the same quantity. We dismissed the protest because it failed to identify any procurement action; indeed, it was entirely speculative based on the planning list alone whether an award was ever made. We further held that there was no basis to believe the protest, concerning an award allegedly made approximately 9 months before the protest's filing, was timely. In its reconsideration request, the protester suggests that precise information identifying the

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procurement was not available until after the protest was filed, and presents an explanation for the period of several months that elapsed between the alleged award and the filing.

We affirm our prior decision dismissing the protest.

The initial protest stated that the Air Force's planning document "revealed" the protested delivery orders and an allegedly illegal sole-source award in May 1984 in an amount exceeding \$5 million. Since the planning document did not identify any award date, specify any contract number, or indicate whether the listed quantities were merely projected requirements, it appeared entirely speculative based on the planning document alone whether any award had been made. The protest failed to provide any further information in this regard and, moreover, there was no explanation why the protest was filed almost 9 months after the alleged award.

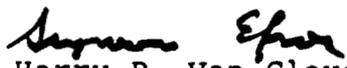
Now, in its reconsideration request, Electro-Methods explains that it only recently discovered the award as a result of its efforts to find out what jet engine parts the Air Force would need in 1985. The protester states that it reviewed the Air Force's planning list for this purpose, and then diligently reviewed the procurement history of the plate retaining turbines when the list alerted it to the Air Force's need. The protester states that the procurement history identified an award in the spring of 1984 (the basis for the protester's previous allegation of a May award is unexplained), and asserts that it only obtained a copy of the actual award document after the protest was filed. Enclosed with the reconsideration request is a copy of a purchase order (No. F41608-84-G-00160032) issued April 25, 1984 for 25,150 of the items to be delivered in increments through 1986.

We do not believe that Electro-Methods has demonstrated any reason to reverse our dismissal. Our Bid Protest Regulations require a protester to set forth a detailed statement of the legal and factual grounds of protest, including the solicitation or contract number. See 4 C.F.R. § 21.1(c)(3) and (4) (1985). While the protester states that it obtained a copy of the delivery order only after the protest already was filed, it admits ✓

that in reviewing the procurement history it obtained information identifying the procurement. However, its failure to include the information in its protest is unexplained. If the history itself contained imprecise information, the protester has failed to show that accurate information was unavailable through reasonably diligent efforts to obtain it. Where a protester has, or through reasonably diligent efforts can obtain, information identifying the procurement under protest, we believe there exists no reason to excuse the protester from submitting such information. Moreover, basic fairness dictates not excusing the protester, since the contracting agency has only 25 working days to respond to a protest with its report, 4 C.F.R. § 21.3(c), and can lose valuable response time by attempting itself to identify the procurement.

We also believe that where a protest appears clearly untimely, as in this case where the protest involved an alleged award 9 months previously, the protester has the burden of showing that the protest is timely under our Bid Protest Regulations. As pointed out in our prior decision, generally a protest of a sole-source award must be filed within 10 working days after the basis for protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Thus, the protest, filed months after the alleged award, on its face appeared untimely. The fact that the reconsideration request, filed more than 1 month after the protest, includes evidence purporting to show the protest's timeliness does not provide a basis for modifying our decision since the evidence was previously available or was available through a diligent effort to obtain it. See Space Age Engineering, Inc.--Reconsideration, B-205594.3, Sept. 24, 1982, 82-2 C.P.D. ¶ 269. Allowing a protester to obtain reversal of a dismissal on the basis of previously-available information would undermine our timeliness requirements and permit protesters to disrupt procurements for an indefinite time. Id.

We affirm our prior decision.

for 
Harry R. Van Cleve
General Counsel