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DECISION



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

FILE: B-219282.2 **DATE:** July 26, 1985
MATTER OF: Pacific Northwest Bell Telephone Company

DIGEST:

1. When a protest alleging solicitation improprieties is filed initially with the contracting agency before the closing date for receipt of proposals, a subsequent protest to GAO before the closing date is untimely when filed more than 10 days after protester learns of initial adverse agency action on the protest.
2. The "significant issue" exception to our rules concerning untimely protests is not applicable to a protest charging that a solicitation contains terms unduly restrictive of competition.

Pacific Northwest Bell Telephone Company (PNB) requests that we reconsider our July 1, 1985, dismissal of the firm's protest to this Office. The protest alleged that certain terms contained in request for proposals No. DAEA08-85-R-0029 issued by the Department of the Army for electronic switching systems unduly restricted competition. We dismissed the protest as untimely because it was not filed with our Office within 10 working days following initial adverse agency action on PNB's protest filed with the Army before the closing date for receipt of initial proposals. Our action was in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1985), which provide that when a protest first has been filed with the contracting agency, any subsequent protest to this Office must be filed within 10 working days after the protester knew or should have known of initial adverse agency action on the agency-level protest.

We affirm our dismissal.

PNB received the Army's June 11, 1985, denial of its protest on June 14, 1985, but did not file a protest with our Office until July 1, 1985. In its request for

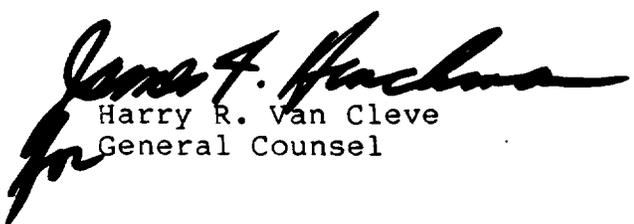
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reconsideration, PNB argues that its protest against a solicitation impropriety to our Office was timely under 4 C.F.R. 21.2(a)(1) (1985) because it was filed prior to the closing date for receipt of initial proposals, which was extended to July 26, 1985.

PNB misunderstands our regulations, which specifically provide that in cases such as this, where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to our Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1985). Since PNB's July 1 protest to our Office was not filed within 10 days of its June 14 receipt of the Army's protest denial, it is untimely and will not be considered. Our decisions have consistently held that to be considered timely, a protest must be filed with our Office within 10 working days of initial adverse agency action even though the closing date for receipt of initial proposals is more than 10 working days from such action. Radix II, Inc., B-212718, Mar. 1, 1984, 84-1 C.P.D. ¶ 256; Informatix, Inc., 58 Comp. Gen. 750 (1979), 79-2 C.P.D. ¶ 159.

PNB argues that even if untimely, its protest should be considered under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c) (1985). We will review an untimely protest under this exception only where it involves a matter of widespread interest or importance to the procurement community that has not been considered on the merits in a previous decision. Sequoia Pacific Corp., B-199583, Jan. 7, 1981, 81-1 C.P.D. ¶ 13. The exception is strictly construed and sparingly used to prevent our timeliness rules from being rendered meaningless. Swintec Corporation--Reconsideration, B-212395.8, Aug. 13, 1984, 84-2 C.P.D. ¶ 161. As we have previously explained, the "significant issue" exception is not applicable to protests, such as the one in the present case, charging that a solicitation contains terms unduly restrictive of competition. See Ricwil, Inc.; Perma-Pipe, Division of Midwesco., Inc., B-214625, B-214625.2, Oct. 17, 1984, 84-2 C.P.D. ¶ 415; Swintec Corporation--Reconsideration, B-212395.8 supra.

The prior dismissal is affirmed.


Harry R. Van Cleve
General Counsel