

5001 Harrington

DECISION



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

FILE: B-220935.4 **DATE:** December 13, 1985

MATTER OF: Instructional Development Corp.--Request
for Reconsideration

DIGEST:

1. Prior dismissal is affirmed where no new facts or legal arguments are raised on reconsideration which show that dismissal was erroneous.
2. Agencies are not required to hold discussions to correct deficiencies in a proposal that is not within the competitive range.

Instructional Development Corp. (IDC) requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. DABT60-85-R-0031, issued by the Department of the Army for material and services required for training in support of communications/electronic equipment. We affirm the dismissal.

The Army rejected IDC's proposal as technically unacceptable. IDC protested the finding of technical unacceptability to the Army, and received a denial of the protest on October 4, 1985. On November 8, IDC filed its protest with our Office. We dismissed the protest as untimely. Our regulations provide that where a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of initial adverse agency action. 4 C.F.R. § 21.2(a)(3). Here, IDC's protest was filed with our Office more than a month after the protester received the Army's response. It was therefore untimely.^{1/}

^{1/} IDC's protest to this Office also raised several issues concerning the propriety of the agency's selection of International Mobile Machines Institute, Inc. for contract award. We dismissed these issues under sections 21.0(a) and 21.1(a) of our regulations, which provide that we will only consider protests filed by offerors whose direct economic interest would be affected by the award of a government contract. IDC did not meet this standard because its proposal was technically unacceptable and it therefore was not eligible for contract award in any event.

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IDC now argues that its protest should be considered timely because it learned of one of the bases of its protest on November 5, only one day before it sent its protest to us. The basis in question is that other offerors were allegedly given a list of discrepancies to correct in their technical proposals to make their proposals acceptable, but IDC was not.

Even if we accept this allegation as timely filed, however, we will not consider it because we find that it does not state a valid basis for protest. See Integrity Management International, B-218001, Jan. 25, 1985, 85-1 CPD ¶ 107. IDC essentially questions the agency's failure to conduct discussions with the firm concerning the deficiencies in its proposal. In a negotiated procurement, however, discussions generally are required to be conducted only with offerors in the competitive range. CBM Electronics Systems, Inc., B-215679, Jan. 2, 1985, 85-1 CPD ¶ 7. In this case, IDC apparently was not included in the competitive range because its proposal was technically unacceptable, and the Army therefore was not required to conduct discussions with IDC. Id. Moreover, IDC has presented no evidence that any of the firms that the Army did hold discussions with were outside the competitive range. Accordingly, we find no basis for our review of the matter.

Our prior dismissal of the protest is affirmed.

for Supreme Effros
 Harry R. Van Cleve
 General Counsel