

DECISION

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

FILE:

B-221980.2

DATE: *May 28, 1986***MATTER OF:**Shaw Aero Development, Inc.--Request
for Reconsideration**DIGEST:**

1. Decision is affirmed on reconsideration where protester raises no new facts or legal arguments that were not considered.
2. Untimely protest will not be considered under exception to timeliness rules for a protest that raises a significant issue where the issue is not of general interest to the procurement community and previously has been addressed by this Office.

Shaw Aero Development, Inc. (Shaw), requests that we reconsider our decision in Shaw Aero Development, Inc., B-221980, Apr. 11, 1986, 86-1 C.P.D. ¶ ____, in which we dismissed Shaw's protest against the award of a contract for static dischargers to Gayston Corporation under request for proposals (RFP) No. DLA900-85-R2312, issued by the Defense Electronics Supply Center (DESC), Defense Logistics Agency (DLA), Dayton, Ohio. We affirm our decision.

Shaw protested that DESC did not properly determine the survivability of the Gayston static discharger, and that the estimated life cycle cost savings of Shaw's discharger would exceed the initial cost savings associated with Gayston's unit. The RFP had designated Gayston as an approved source of supply and clearly did not provide for the use of life cycle costing in evaluating offers. We dismissed the protest of these alleged solicitation defects as untimely because it was not filed before the closing date for the receipt of proposals, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985).

We noted that in a cover letter to its offer, Shaw requested that DESC consider life cycle costs and reconsider the RFP's approved items because they were not able to withstand the environment of the high performance aircraft on which they were mounted. According to Shaw, the government had been buying high quantities of the discharger, and the necessity for such large quantities could only be related to the discharger's inability to remain on the aircraft. We

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held that even if Shaw's cover letter to its offer were considered a timely agency-level protest, its protest to our Office would still be untimely because it was filed more than 8 months after the closing date, i.e., the initial adverse agency action. We referred to the requirement in our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3), that if a protest is filed initially with a contracting activity, a subsequent protest to this Office must be filed within 10 working days after the protester has actual or constructive knowledge of initial adverse agency action. We explained that this included knowledge that the agency proceeded with the receipt of proposals despite the protest.

We also addressed Shaw's assertion that its protest was not untimely under 4 C.F.R. § 21.2(a)(1) because the contention that Gayston's static discharger was unsatisfactory was based on the rise in government requirements to 40,000 dischargers at time of award, a rate Shaw was not aware of before the closing date. We found that contention without merit, since the RFP requested unit prices on stepladder quantities ranging from a low of 5,000 to a high of 50,000.

In its request for reconsideration, Shaw complains that we never addressed its contentions that (1) government requirements for 40,000 units could include requirements for the F-16 aircraft for which the Gayston product was not approved; (2) the requirement of 40,000 units was beyond the government's needs; and (3) given what Shaw alleged was the high failure rate of Gayston's discharger, it was in the government's best interest to reject Gayston's low offer and to purchase Shaw's unit instead. Shaw also states that stepladder bidding is commonplace, and that we should not have considered its protest untimely simply because the RFP requested unit prices on stepladder quantities ranging to a high of 50,000.

A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification of a decision is deemed warranted, specifying any errors of law made in the decision or information not previously considered. 4 C.F.R. § 21.12(a). Shaw's request for reconsideration, however, essentially only repeats statements the firm alleged in its initial protest to support its objection to the award to Gayston. Since the bases for the objection were untimely, we did not discuss the merits of the allegations supporting the objection. Neither Shaw's reiteration of those allegations nor

its view that we should ignore the RFP's use of stepladder quantities provides a basis for reversing our decision that the protest was untimely. See TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 C.P.D. ¶ 389.

Shaw also suggests that we should consider its protest pursuant to the exception in our timeliness rules for a protest that raises a significant issue. See 4 C.F.R. § 21.2(c). This exception is strictly construed and sparingly used to prevent the rules from being rendered meaningless. We will invoke it only if the subject of the protest concerns a matter of widespread interest or importance to the procurement community and involves a matter that has not been considered on the merits in prior decisions of our Office. Detroit Broach and Machine, B-213643, Jan. 5, 1984, 84-1 C.P.D. ¶ 55. The issue presented by Shaw's protest, whether Gayston's discharger meets DLA's minimum needs, concerns this particular procurement only and is not of sufficient impact to warrant review under our significant issue exception. Further, this Office previously has considered numerous protests concerning a procuring agency's statement of its minimum needs. E.g., Radix II, Inc., et al., B-212267 et al., Jan. 24, 1984, 84-1 C.P.D. ¶ 113.

Since the protester has provided no grounds for this Office to reconsider our prior decision, the decision is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel