



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Canadian Commercial Corporation--Reconsideration

File: B-222515.2

Date: August 1, 1986

DIGEST

Untimely protest will not be considered under the significant issue exception to the General Accounting Office's timeliness rules merely because the protester is a Canadian firm, where the issues raised are ones that the General Accounting Office routinely considers on the merits.

DECISION

Canadian Commercial Corporation (CCC) requests reconsideration of our decision in Canadian Commercial Corp., B-222515, July 16, 1986, 86-2 CPD ¶ _____, dismissing a protest against the award of a contract to Rois Manufacturing Company, Inc. (Rois) under request for proposals (RFP) No. DLA120-85-R-1071, issued by the Defense Personnel Support Center, Defense Logistics Agency (DLA), Philadelphia, Pennsylvania for a quantity of medical chests. We affirm the dismissal.

The solicitation, as amended, established a closing date of August 30, 1985. Since the requirement had been procured historically on a sole-source basis from Rois, DLA, on July 15, 1985, issued an amendment advising Rois that "they [were] now in a competitive situation." DLA received eight offers. After evaluation of proposals, the contracting officer, on December 30, 1985, sent the six highest-priced offerors, including CCC, a notice that they were no longer considered to be in the "competitive range" (CCC represented a Canadian firm that was fifth low). Award was made to Rois, the low offeror, on February 28, 1986, and CCC was advised of the award on March 14. CCC protested to DLA by letter dated March 27, and its protest was denied on April 4. This protest was originally filed with our Office on April 18.

In its protest to our Office, CCC raised the following grounds of protest: 1) DLA afforded an unfair advantage to Rois over other offerors by informing that firm that it was in a "competitive situation"; 2) the solicitation's specifications, by requiring only a specific brand name latch, were overly restrictive of competition; 3) DLA improperly excluded the firm from the "competitive range," thereby depriving it of the benefit of written and oral discussions and an opportunity to submit a

best and final offer with a substantially reduced price; 4) DLA failed to notify CCC at the earliest practicable time that its proposal was no longer eligible for award; 5) DLA did not notify CCC of the award until "two weeks after the fact" so that CCC could not take advantage of the requirement that an agency direct the contractor to cease performance if a protest is filed within 10 days of the date of contract award; and 6) DLA failed to grant CCC a debriefing.

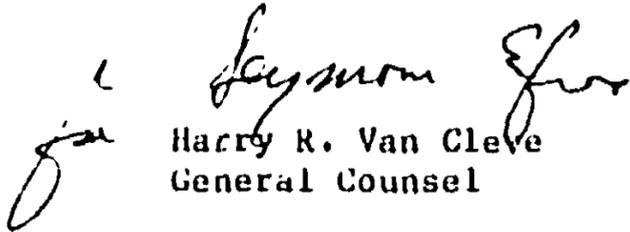
In our decision, we dismissed CCC's fifth and sixth bases for protest because we found these matters to be procedural in nature that did not affect the validity of the contract award. We also dismissed the remaining grounds for protest because we found them to have been filed either more than 10 working days after the bases for them were known or should have been known, see 4 C.F.R. § 21.2(a)(2) (1986), or the matters concerned alleged improprieties in the solicitation which were not filed before the time set for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1).

CCC does not challenge our determination that these protest grounds were untimely but, rather, asserts that we should nevertheless review the matter based on the "significant issue" exception to our timeliness rules at 4 C.F.R. § 21.2(c). Specifically, CCC contends that DLA continues to employ "illegal procurement practices" to the detriment of all Canadian suppliers and contractors. According to CCC, while it has attempted to work with DLA to promote competition, DLA summarily excluded the firm from the present procurement after a "delayed, misleading, and illegal course of conduct." Further, because of the international significance of this matter involving Canadian firms, CCC requests our Office to consider the matter on the merits since CCC is experiencing recurrent problems with DLA.

We remain of the view that the protest is untimely and should not be considered on the merits. In order to invoke the significant issue exception, the subject matter of the protest not only must evidence a matter of widespread interest or importance to the procurement community, but must also involve a matter that has not been considered in previous decisions. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being rendered meaningless. Scott Fischman Co.--Request for Reconsideration, B-216671.2, Dec. 4, 1984, 84-2 CPD ¶ 623. The protest here does not fall within the exception, since the issues raised--such as improper exclusion from the competitive range, defective specifications, late notice of rejection--are ordinary and common protest issues that we routinely consider on the merits. Further, our Office regards bid protests as serious matters that require effective and equitable procedural standards. Our Bid Protest Regulations are designed to give protesters and interested parties a fair opportunity to present their cases, with only minimal, if any, disruption of the orderly and expeditious process of government procurement. See Bird-Johnson Co.--Request for Reconsideration, B-199445.3, Oct. 14, 1980, 80-2 CPD ¶ 275. To that end, we require that allegations of procurement

irregularities be raised by protesters when corrective action, if necessary, is most practicable and thus least burdensome on the conduct of the procurement. While CCC and its Canadian clients may be experiencing recurrent problems with DLA, we do not think it is unfair or burdensome to impose the same standards of timeliness for filing protests on Canadian firms as we do on American firms.

Accordingly, the dismissal is affirmed.


Harry R. Van Cleve
General Counsel