

7-11-86



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gai-Tronics Corporation-Reconsideration

File: B-222601.6

Date: November 7, 1986

DIGEST

Prior dismissal is affirmed where protest against the rejection of proposal as technically unacceptable was filed with General Accounting Office more than 10 days after adverse action on initial protest to the contracting agency, and protester is not an interested party to raise alleged Buy American Act violation.

DECISION

Gai-Tronics Corporation requests reconsideration of our dismissal of its protest, B-222601, under request for proposals (RFP) No. DAEA-08-86-R-0033, issued by the Department of the Army. Gai-Tronics contended that its proposal was improperly rejected by the agency, and that the Army evaluated proposals without regard to requirements of the Buy American Act.

We dismissed the protest on October 9, 1986 because Gai-Tronics failed to protest to our Office within 10 working days after it learned of adverse agency action on its initial protest to the Army, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1986).

On May 23, 1986, the Army informed Gai-Tronics that its proposal had been rejected as technically unacceptable, and, following an inquiry from the protester, provided the specific reasons for the rejection in a letter of June 16. The protester contested the Army's explanation for its determination in a letter dated June 26, and on July 10 the Army responded that its initial determination had been correct. Gai-Tronics did not protest the Army's rejection of the firm's proposal to our Office until October 8, after it learned of an award to another firm.

Protesters must file their protests with our Office within 10 days after learning of the basis of protest or after learning of adverse agency action on a timely protest initially filed

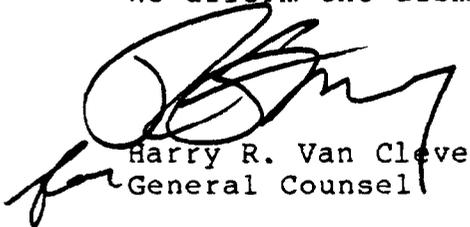
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with the procuring agency. 4 C.F.R. § 21.2(a). Here, Gai-Tronics first learned one basis for its protest--the reasons for rejection of its proposal--when it received the Army's June 16 letter. Rather than protest the matter to us, the firm protested to the agency, and learned of adverse agency action when it received the Army's July 10 letter. Its protest to our Office 3 months later was clearly untimely.

Gai-Tronics did not learn of its other basis for protest--an alleged violation of the Buy American Act--until it received notice of an award on September 27. A firm may not, however, protest an agency procurement action unless it has a direct economic interest in the resolution of the protest. 31 U.S.C. § 3553(a) (Supp. III 1985); 4 C.F.R. § 21.1(a). Since Gai-Tronics failed to file a timely protest of the rejection of its proposal, it is not an interested party to raise the Buy American Act issue. See Endure-A-Lifetime Products, Inc., B-219529.2, Oct. 11, 1985, 85-2 CPD ¶ 404.

The protester argues that it was not obligated to protest until after contract award because it continued its efforts to change the Army's determination. Our timeliness rules are strictly construed in order to ensure equitable and prompt resolution of protests. Coastal Industries, Inc.--Reconsideration, B-223158.2, June 30, 1986, 86-2 CPD ¶ 20. The fact that a protester continues its protest with the agency provides no basis for waiving timeliness requirements. Energy Master of Maryland Inc., B-215642, July 20, 1984, 84-2 CPD ¶ 76.

We affirm the dismissal of the protest.



Harry R. Van Cleve
General Counsel