

A. Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: WBK Controls Inc.--Reconsideration

File: B-237294.2

Date: November 2, 1989

DIGEST

An untimely protest will not be considered under the significant issue or good cause exceptions to the bid protest timeliness requirements where the issue raised is not of widespread interest to the procurement community or a matter of first impression and there is no indication of any compelling reason beyond the protester's control that prevented it from filing a timely protest.

DECISION

WBK Controls Inc. requests that we reconsider our dismissal of October 6, 1989, as untimely of WBK's protest that the Department of the Air Force improperly incorporated WBK's proprietary information, submitted in response to request for proposals (RFP) No. F42600-88-R-60539, into RFP No. F42600-89-R-0163.

We affirm the dismissal.

The Air Force received and accepted only one proposal, the protester's, under RFP No. F42600-88-R-60539 and thus decided to cancel the solicitation on April 25, 1989. The agency later resolicited the requirement under RFP No. F42600-89-R-0163.

WBK initially filed a protest with the contracting activity after the date for receipt of proposals but before the date of award. WBK alleged that the Air Force used WBK's technical proposal submitted under RFP No. 42600-88-R-60539 to prepare the purchase description for the subsequent solicitation and in so doing illegally committed "technical transfusion" of WBK's proprietary data to WBK's competitors. The Air Force dismissed WBK's protest, which was based upon an alleged impropriety apparent in the solicitation, as untimely, since it was not filed prior to the closing date for receipt of proposals.

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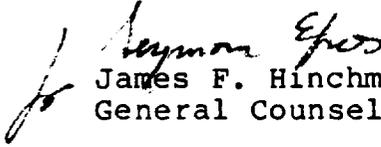
WBK then filed a protest in our Office on October 5, requesting that we review the agency's decision. We dismissed WBK's protest on October 6, on the ground that a protest that is initially filed with a contracting activity is not considered timely filed in our Office under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1989), unless it would have been timely had it been filed in our Office originally. Since this protest was based on an alleged impropriety contained in the solicitation, WBK had to file prior to the closing date for receipt of proposals to be timely. Victaulic Co. of America, B-217129, May 6, 1985, 85-1 CPD ¶ 500.

On October 17, WBK requested that we reconsider our dismissal of its protest and consider the merits of its protest under our "good cause" or "significant issue" exception to our timeliness rules. 4 C.F.R. § 21.2(b). The significant issue exception is strictly construed and sparingly used to prevent the timeliness rules from being rendered meaningless. We will invoke this exception only if consideration of the protest would be in the interest of the procurement system as a whole. Perdomo & Sons, Inc.-- Recon., B-234614.2, May 5, 1989, 89-1 CPD ¶ 430. Generally, we make this determination by looking at whether the subject of the protest concerns a matter of widespread interest to the procurement community or involves a matter that has not been considered on the merits in a prior decision. Id. Any disposition on the merits of WBK's protest would concern only this firm and the alleged disclosure of its proprietary data in this procurement and not the procurement system as a whole. See Victaulic Co. of America, B-217129, supra.

The protester also argues this case may fall under the good cause exception to our timeliness requirements. However, this exception is limited to circumstances where some compelling reason beyond a protester's control prevents the protester from filing a timely protest. Management Eng'rs, Inc.; KLD Assocs., Inc., B-233085; B-233085.2, Feb. 15, 1989, 89-1 CPD ¶ 156. Here, WBK has offered no explanation as to why it failed to protest the alleged disclosure of its

proprietary data before proposals were due. Under the circumstances, we will not consider the protest on the merits.

The prior dismissal is affirmed.


James F. Hinchman
General Counsel