



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter: Nacimiento Medical Foundation--Request for
Reconsideration

File: B-237498.2

Date: December 7, 1989

DIGEST

Untimely protest that agency rejection of proposal is inconsistent with Indian Self-Determination Act, 25 U.S.C. 450 et al. (1982), does not fall under significant issue exception to Bid Protest Regulations.

DECISION

Nacimiento Medical Foundation requests reconsideration of our October 19, 1989, dismissal of its protest against the rejection of its proposal under request for proposals No. M-89-00-49PD, issued by the Public Health Service, Department of Health and Human Services (DHHS), for out-patient, emergency room, and ambulance services to benefit certain Indian communities. We affirm our prior dismissal.

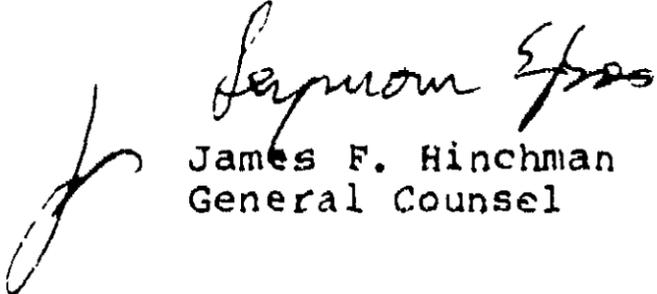
We dismissed Nacimiento's protest as untimely because it was not filed within 10 working days from the date that Nacimiento first learned of its basis of protest as required by our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(2) (1989). In its initial submission, Nacimiento advised that DHHS informed it that the proposal had been determined to be unacceptable by letter dated July 10, 1989. Nacimiento's protest was filed in this Office on October 18, 1989, significantly past the required time for filing.

In its request for reconsideration, Nacimiento contends that the protest raises issues that are significant to the procurement process which should be considered under that exception to our timeliness requirements in 4 C.F.R. § 21.2(b). To support this contention, Nacimiento alleges that DHHS took deliberate steps to award a sole-source contract to a particular offeror and that these actions have undermined the Congressional mandate to promote Indian self-determination. See 25 U.S.C. §§ 450, and 450(a) (1982).

Nacimiento contends that compliance with Indian self-determination must be considered an issue significant to the procurement system, whenever the government, as here, is contracting for services with Indians as the beneficiaries.

The significant issue exception to our timeliness rule is strictly construed and sparingly used to prevent the timeliness rules from becoming meaningless. We will invoke it only where the protest raises an issue of first impression that would be of significant interest to the procurement community. See Valentec Kisco, Inc., B-234421, Mar. 9, 1989, 89-1 CPD ¶ 261. In this regard, the fact that Indians are beneficiaries of the contract does not in itself qualify Nacimiento's protest for an exception to our timeliness requirements. We have previously recognized that an untimely protest concerning agency compliance with the Indian Self-Determination Act and its implementing regulation does not fall under the "significant issue" exception. Shannon County Gas--Reconsideration, 64 Comp. Gen. 450 (1985), 85-1 CPD ¶ 384. Moreover, while the protester asserts that the agency has not complied with the goals of the Indian Self-Determination Act, it appears that the resolution of the protester's issues would only concern whether its proposal was properly evaluated--an issue which does not fall under the "significant issue" exception. Valentec Kisco, Inc., B-234421, supra.

The prior dismissal is affirmed.



James F. Hinchman
General Counsel