



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Space Vector Corporation--Request for
Reconsideration

File: B-237986.4

Date: February 26, 1990

C. Dennis Ahearn, Esq., for the protester.
Matthew Simchak, Esq., Ropes and Gray, for Space Data Corporation, and Thomas J. Madden, Esq., Venable, Baetjer, Howard and Civiletti, for Space Services, Inc., interested parties.

Charles W. Morrow, Esq., and James S. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Untimely protest against specifications, content of discussions and technical evaluation is not for consideration under the significant issue exception to the General Accounting Office Bid Protest Regulations.

DECISION

Space Vector Corporation requests reconsideration of Space Vector Corporation, B-237986.3, Jan. 17, 1990, 90-1 CPD ¶ ____, which dismissed its protest against the award of a contract to Space Data Corporation under request for proposals (RFP) No. SDIO-89-R-0006, issued by the Department of Defense, Strategic Defense Initiative Organization (SDIO), for flight test services. We deny the request for reconsideration.

Initially, Space Vector protested in a letter to our Office dated December 6, 1989, that the RFP was not sufficiently defined to do realistic costing, that the procedure for conducting discussions was improper and that Space Data's proposed subcontractor provided it with an unfair competitive advantage. On December 20 we received additional grounds of protest from Space Vector concerning the evaluation of its proposal based upon information it indicated was obtained at a December 5 debriefing.

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We dismissed Space Vector's post-award protest allegations as untimely.^{1/} The protest against the agency's allegedly undefined procedure for evaluating cost was apparent from the face of the solicitation. Although our Bid Protest Regulations require such protests be filed prior to the closing date for receipt of proposals, 4 C.F.R. § 21.2(a)(1) (1989), Space Vector did not file until after the award. We also found that the allegations concerning the conduct and content of discussions were required to be filed before the next closing date after the allegedly improper discussions were conducted, 4 C.F.R. § 21.2(a)(1); however, here too Space Vector's protest was filed after award. Therefore, we found both protests untimely.

In its December 20 supplemental protest, Space Vector contended that SDIO did not properly evaluate the cost realism of proposals, that the evaluation was flawed for not comparatively evaluating proposals, that the evaluation was fragmented, that the evaluators were not qualified and that the proposal was evaluated unfairly. We determined these independent grounds of protest untimely because Space Vector filed them more than 10 working days after December 5, when these bases for protest were known to it. See 4 C.F.R. § 21.2(a)(2).

Space Vector argues the questions of whether cost was sufficiently defined in the solicitation and whether the program was "prejudiced from the start" were not apparent until after the award and that it would have been premature to protest these matters before the closing date. We disagree. Although Space Vector now seeks to modify these protest bases, its December 6 letter did not relate them to the award selection. Instead, these generalized allegations only mentioned the solicitation itself and certain activities occurring prior to the submission of best and final offers.

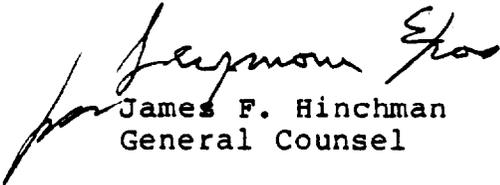
Space Vector also contends that the untimely issues should be considered under the significant issue exception to our timeliness requirements, see 4 C.F.R. § 21.2(b), because this procurement reflects the government's first attempt at privatizing commercial launch services.

The significant issue exception to our timeliness rules is strictly construed and sparingly used to prevent the

^{1/} We dismissed all issues save the one involving Space Data's alleged competitive advantage which currently is being considered on the merits.

timeliness rules from becoming meaningless. We will invoke it where the protest raises an issue of first impression that would be of significant interest to the procurement community or where the circumstances clearly indicate that there has been an improper action by the agency. Reliable Trash Servs. Co. of MD., Inc., 68 Comp. Gen. ___ (1989), 89-1 CPD ¶ 535. Nacimiento Medical Found.--Request for Reconsideration, B-237498.2, Dec. 7, 1989, 89-2 CPD ¶ 528. While Space Vector argues the fact that this is a seminal procurement makes the protest significant, we do not find anything particularly unique about this procurement which qualifies the protest for an exception to our timeliness requirements. Rather, the protest bases concerning the contents of the solicitation, the conduct of discussions and evaluation of proposals are not unique.

We deny the request for reconsideration.


James F. Hinchman
General Counsel