

145692 Calhoun



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Bollinger Machine Shop & Shipyard, Inc.--
Reconsideration

File: B-245702.2

Date: January 16, 1992

Marcus B. Slater, Jr., Esq., and Stacey L. Romberg, Esq.,
Fort & Schlefer, for the protester.
Tania Calhoun and Andrew T. Pogany, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Request for reconsideration of decision dismissing protest
as untimely is denied where request for reconsideration
provides no evidence that protest was timely filed but
merely expresses disagreement with policy underlying General
Accounting Office Bid Protest Regulations.

DECISION

Bollinger Machine Shop & Shipyard, Inc. requests that we
reconsider our decision in Bollinger Mach. Shop & Shipyard,
Inc., B-245702, Sept. 23, 1991, 91-2 CPD ¶ 269, in which we
dismissed Bollinger's protest of the terms of amendment
No. 0009 to request for proposals (RFP) No. DAAK70-91-R-
0007, issued by the Department of the Army for a Lighter,
Amphibian, Heavy-Lift (LAMP-H) vessel.

We deny the request for reconsideration.

The Army issued the solicitation on October 29, 1990, and
initial proposals were submitted on April 22, 1991, with
receipt of best and final offers (BAFO) scheduled for
August 12. The protested amendment was issued on July 29.
Bollinger protested the changes made by this amendment to
the agency on August 9. Despite Bollinger's protest, the
Army proceeded with receipt of BAFOs on August 12. The Army
formally denied Bollinger's agency-level protest in a letter
dated August 30; Bollinger filed a protest with our Office
on September 17.

We dismissed the protest as untimely because, under our Bid
Protest Regulations, if an agency-level protest has been
filed initially, any subsequent protest to our Office must
be filed within 10 working days after the protester has

"actual or constructive knowledge of initial adverse agency action." 4 C.F.R. § 21.2(a)(3) (1991). The quoted phrase includes knowledge that the agency proceeded with the receipt of proposals in the face of the protest, 4 C.F.R. § 21.0(f).¹ Here, the Army proceeded with receipt of BAFOs without addressing Bollinger's concerns; this constituted initial adverse agency action on the agency-level protest. Since more than 10 working days elapsed between the August 12 BAFO closing date and the September 17 protest to our Office, the protest was untimely.

Bollinger concedes that the protest was untimely under our Bid Protest Regulations. However, Bollinger argues that because the solicitation was a negotiated one and the specifications therefore could be changed to reflect its protest after receipt of BAFOs, the August 12 receipt of BAFOs without addressing the protester's concerns was not necessarily "adverse" to Bollinger.

We find no merit to this position. The time limits set out in our Bid Protest Regulations reflect our attempt to balance what we recognize are often conflicting considerations: resolving bid protests expeditiously without unduly disrupting or delaying the procurement process, and affording protesters a fair opportunity to present their cases. Grant Technical Servs., B-235231.2, May 26, 1989, 89-1 CPD ¶ 514. To that end, we require that allegations of procurement irregularities be raised when corrective action, if necessary, is most practicable and thus least burdensome on the conduct of the procurement. The speculation inherent in Bollinger's position, i.e., that the Army might change the specifications during the negotiation process, and thus that a firm objecting to a specification may delay filing a protest essentially until just before the contract is awarded, is inconsistent with those considerations. Bird-Johnson Co.--Recon., B-199445.3, Oct. 14, 1980, 80-2 CPD ¶ 275.

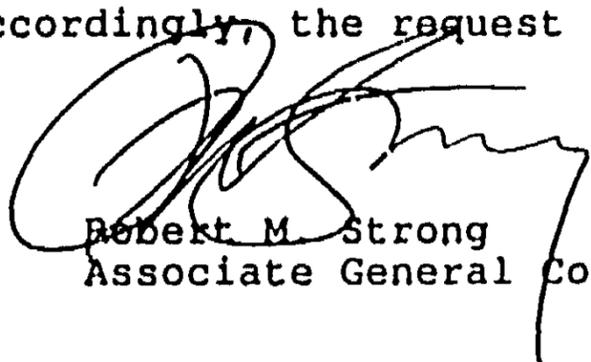
Bollinger further argues that our holdings on this issue, as well as our Bid Protest Regulations, are inconsistent with federal procurement policy. Bollinger asserts that requiring that a protest be filed in our Office within 10 working days of the contracting agency's receipt of BAFOs deprives the agency of the opportunity to decide the protest in the first instance and constrains the protester to file

¹Our decisions have consistently taken this position. See, e.g., Ramer Prods. Ltd.--Recon., B-224027.7, Sept. 28, 1987, 87-2 CPD ¶ 304; Shaw Aero Dev., Inc., B-221980, Apr. 11, 1986, 86-1 CPD ¶ 357; Federal Acquisition Mgmt. Training Servs., B-220070, Nov. 26, 1985, 85-2 CPD ¶ 604.

protests prior to actually knowing the contracting agency's position.

We cannot agree that the effect of our position is to discourage prospective contractors from seeking initial resolution of their problems with the contracting agency. To the contrary, we believe that it simply reflects our consistent position that while firms should do so, it is incumbent upon them to remain diligent in their pursuit of the matter so as not to delay the procurement process any more than absolutely necessary. Bird-Johnson Co.--Recon., supra. Thus, our Bid Protest Regulations clearly advise protesters that after a protest has been filed with a contracting agency, any protest to our Office must be filed within 10 working days of "formal notification of or actual or constructive knowledge of initial adverse agency action." (Emphasis added.)

Accordingly, the request for reconsideration is denied.



Robert M. Strong
Associate General Counsel