



Comptroller General  
of the United States

Washington, D.C. 20548

**Decision**

**Matter of:** Adrian Supply Company--Request for  
Reconsideration and Protests

**File:** B-242819.6; B-242819.7; B-247293; B-247293.2

**Date:** April 9, 1992

Bob Stormberg for the protester.  
Scott H. Riback, Esq., David Ashen, Esq., and John M.  
Melody, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

**DIGEST**

1. Dismissal of protest for failure to diligently pursue information forming basis for protest is affirmed where delay in protester's receipt of the information was caused by its failure to file a timely supplemental document request pursuant to the Bid Protest Regulations and where the basis for protest was the same as that in previously-dismissed untimely protest.

2. Protest challenging resolicitation and subsequent cancellation of that resolicitation is dismissed where protest is based on underlying untimely argument that protester was entitled to award under canceled original solicitation.

**DECISION**

Adrian Supply Company requests reconsideration of the portion of our decision in Adrian Supply Co.--Recon., B-242819.4; B-242819.5, Oct. 9, 1991, 91-2 CPD ¶ 321, in which we dismissed Adrian's second protest of the cancellation of invitation for bids (IFB) No. F29650-90-B-0039 (IFB-0039), issued by Department of the Air Force for an electrical substation at Kirtland Air Force Base, New Mexico. Adrian also protests the Air Force's issuance of a new solicitation for an electrical substation, IFB No. F29650-92-B-0002 (IFB-0002), as well as the subsequent cancellation of that IFB before bid opening due to the agency's determination that it no longer needs the substation.

We affirm the dismissal and we also dismiss the new protests.

[Request for Reconsideration of Decision (Adrian Supply Co.) - See also [unclear] [unclear]]

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There is an extensive background to this matter. In its initial protest to our Office concerning IFB-0039, Adrian challenged the award of a contract to another offeror. After the Air Force agreed to consider making award to Adrian, it withdrew the protest (B-242819). When the agency subsequently canceled the solicitation on the bases that it failed to provide for an adequate evaluation and the delivery schedule did not represent the agency's requirements, Adrian protested the cancellation (B-242819.2). We dismissed that protest as untimely on April 1, 1991, on the basis that Adrian, although it had been apprised of the intended cancellation and the reasons therefor, impermissibly waited more than 10 working days for the formal agency determination to cancel before protesting. See 4 C.F.R. § 21.2(a)(2) (1991). We subsequently affirmed this dismissal, see Adrian Supply Co.--Recon., B-242819.3, July 17, 1991, 91-2 CPD ¶ 64, denied another request for reconsideration, Adrian Supply Co.--Recon., B-242819.4; B-242819.5, Oct. 9, 1991, 91-2 CPD ¶ 321, and dismissed as untimely a second protest presenting new evidence in support of Adrian's challenge to the propriety of the cancellation of IFB-0039. Id. This second protest was a challenge to the Air Force's cancellation of IFB-0039 based upon Adrian's review of its competitor's bid which Adrian obtained pursuant to the Freedom of Information Act (FOIA). We found that Adrian had failed to diligently pursue the information forming the basis for the second protest because the firm had obtained its competitor's bid under FOIA rather than through the document disclosure provisions of section 21.3(f) of our bid protest regulations. The Air Force then issued a new solicitation (IFB-0002) for the electrical substation, but subsequently canceled that solicitation when it concluded that its requirement for the substation no longer existed because of a change in the intended source of electricity.

Here, Adrian once again requests reconsideration of our dismissal of its protest of the IFB-0039 cancellation; Adrian disputes the finding in our October 9 decision that it failed to diligently pursue the information on which its arguments under that iteration of its cancellation protest were based. Adrian alleges in this regard that it did in fact attempt to obtain a copy of its competitor's bid under our document disclosure regulation. In support of its position, Adrian alleges that it telephonically requested the advice of the General Accounting Office attorney handling the case and was informed that it should seek the document under FOIA.

Our file in this case contains no record of the telephone conversations during which Adrian alleges that it was advised to seek its competitor's bid through FOIA and the attorney in question has no present recollection of these

conversations. Even assuming that the conversations occurred, and as we pointed out in the October 9 decision, Adrian, by choosing to use FOIA rather than the document disclosure provisions of our regulations, assumed the risk that it would not receive the bid in time for us to be able to consider it in resolving the protest. In this regard, we think the provisions of 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(f)) impose an affirmative duty on protesters to seek documents through our document disclosure procedures and to comply with the requirements of those procedures. Adrian thus should have filed a written request for the document within 2 working days of when it received the Air Force's report. Adrian did request that the Air Force provide a copy of its competitor's bid in its written comments on the agency report, but that request was made more than 2 weeks after the agency report was filed rather than within the 2-day period required by section 21.3(f).

Even if Adrian had properly utilized the document disclosure procedures to obtain its competitor's bid in a timely manner, we do not believe that Adrian could have relied on its receipt of that bid to initiate a new protest. Our rules permit the filing of a new or supplemental protest when information recently (and diligently) acquired gives rise to a new basis for protest. See, e.g., Keystone Valve, USA, Inc., B-240954; B-240954.2, Apr. 8, 1991, 91-1 CPD ¶ 355. On the other hand, we do not permit the filing of a new protest based on recently acquired information when the information does not give rise to a new basis of protest but only represents additional support for an issue that already has been or should have been raised. Cf. Atlantic Marine, Inc., B-239119.2, Apr. 25, 1990, 90-1 CPD ¶ 427.

Here, Adrian's protest of IFB-0039 was predicated in part on Adrian's belief that the Air Force's asserted need to evaluate transformer load loss, and its inability to do so on the basis of the IFB as issued, was not an adequate basis to support the cancellation. In this respect, Adrian initially argued that load loss could have been evaluated from the information in the competing bids and that such an evaluation would have shown that load loss would have no meaningful impact on overall cost to the government or the relative standing of bidders. Upon receipt of its competitor's bid, Adrian argued that the bid contained more precise load loss information than it had assumed was the case and that this information made it even easier for the Air Force to determine that load loss was not a meaningful consideration in this competition.

Thus, the new protest did no more than reiterate the initial protest--it simply relied on more specific information than had been available earlier. Accordingly, even if Adrian had

diligently acquired a copy of its competitor's bid, we would not have viewed that bid as providing Adrian with a new basis for protest.

We will not consider Adrian's protest against the issuance of IFB-0002 and the subsequent cancellation of the requirement. These protests were based on, and to some extent were presented in further support of, Adrian's ongoing argument that the cancellation of IFB-0039 was improper. In this regard, Adrian does not object to any of the terms of the new IFB, but rather merely argues that the terms of the new IFB show that the reasons for the first cancellation were legally insufficient, as Adrian has argued all along. Similarly, Adrian does not maintain that cancellation of the requirement was improper because it desired to compete under the resolicitation; it argues only that the cancellation is an improper attempt to render academic Adrian's protest of the issuance of the solicitation (Adrian suspects that the Air Force is meeting this requirement now through a Corps of Engineers contract) and, ultimately, to deprive it of the award under IFB-0039. Adrian requests as relief that it receive the award under IFB-0039. This being the focus of Adrian's protests concerning IFB-0002 and cancellation of the requirement, our determination that Adrian's protest of the cancellation of IFB-0039 is untimely--such that Adrian could not receive the award under IFB-0039 even if we agreed with its arguments in these additional protests--renders these additional protests academic. See Sioux Falls Shopping News, B-236421.3, Nov. 22, 1989, 89-2 CPD ¶ 493.

Our October 9 decision is affirmed and the protests are dismissed.



James F. Hinchman  
General Counsel