

R. White  
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Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Thresholds Unlimited, Inc.--Request for Reconsideration

**File:** B-248817.3

**Date:** August 12, 1992

Charles L. Weinert for the protester.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Dismissal of a protest as untimely was proper where the protester's challenge to its exclusion from the competitive range was filed approximately 10 weeks after the Department of the Air Force rendered an adverse decision on an agency-level protest raising the issue, even though the protest to the General Accounting Office (GAO) was filed within 10 days of contract award, and the protester allegedly received erroneous advice about the timeliness requirements in GAO's Bid Protest Regulations.

### DECISION

Thresholds Unlimited, Inc. (TUI) requests reconsideration of our dismissal as untimely of its protest challenging the exclusion of its proposal from the competitive range under request for proposals (RFP) No. F44650-92-R-0001, issued by the Department of the Air Force for the operation and maintenance of Contracted Training Flight Services aircraft for a 5-year period. TUI also asks for an investigation and independent technical review by our Office.

We deny the request for reconsideration.

Our prior decision dismissed as untimely TUI's challenge to its exclusion from the competitive range because it was filed approximately 10 weeks after the Air Force rendered an adverse decision on TUI's agency-level protest--and nearly 3 months after the Air Force notified the company of its exclusion from the competitive range. Specifically, after the Air Force notified TUI by letter dated February 25, 1992, that TUI's proposal would be excluded from further consideration, the company filed an agency-level protest on March 4. Five days later, by letter dated March 9, the Air

Force rejected TUI's protest. Instead of challenging the Air Force decision within 10 days, as required by our Bid Protest Regulations, see 4 C.F.R. § 21.2(a)(3) (1992), TUI waited until May 22 before filing its protest with our Office. As a result, our Office dismissed the protest.

According to TUI, our Office should reverse our dismissal of the protest and consider the protester's claims on the merits because: (1) the protest was filed within 10 days of the Air Force's decision to award the contract to Phoenix Air Group, Inc.; (2) TUI allegedly relied to its detriment on advice from both the contracting office, and a Congressional staff assistant, that it could file a protest after contract award; and (3) TUI believes that even if the protest is untimely, it presents significant issues supporting a waiver of timeliness requirements.

Under our Bid Protest Regulations, to obtain reconsideration a protester must either show that our prior decision contains errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). We find that TUI has failed to show that our prior decision was erroneous, or that its protest was otherwise appropriate for consideration despite its untimeliness.

Despite its assertion to the contrary, TUI could not wait nearly 10 weeks after receiving an adverse response from the Air Force before filing its protest with our Office, even if it did file within 10 days of award to Phoenix. Harlan & Assocs., B-241590.2 et al., Feb. 12, 1991, 91-1 CPD ¶ 157. Our dismissal notice to TUI explained our timeliness rules and the fact that these rules reflect the dual requirements of giving parties a fair opportunity to present their cases and to resolve disputes expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. TUI's request that we reconsider our dismissal of its protest does not establish that our application of these rules was in error, and therefore, we will not reconsider our prior decision. Id.

TUI's alleged reliance on erroneous advice does not excuse its untimely filing. Milwaukee Industrial Clinics, S.C.--Recon., 65 Comp. Gen. 17 (1985), 85-2 CPD ¶ 426 (reliance on erroneous advice from a Congressional office); pH-logistics, Inc.--Recon., B-244162.2, June 27, 1991, 91-1 CPD ¶ 611 (reliance on erroneous advice from agency contracting office). Nor do we agree that TUI's protest meets the "significant issue exception" to our timeliness rules. See 4 C.F.R. § 21.2(c). The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been

considered on the merits in a previous decision. DynCorp, 70 Comp. Gen. 36 (1990), 90-2 CPD ¶ 310. TUI's complaints, particular to this procurement, do not present significant issues not previously considered.

TUI supplements its request for reconsideration with a request that our Office conduct an investigation into this procurement, as well as an independent technical review of the agency's evaluation decisions, in order to determine whether TUI was fairly excluded from the competitive range. Our Office does not conduct investigations as part of our bid protest function. Caelus Devices, Inc.--Recon., B-241336.3, Dec. 14, 1990, 90-2 CPD ¶ 491. With respect to the request for an independent technical review, TUI did not timely request a review of the Air Force decision to exclude it from the competitive range. In addition, even if TUI had filed a timely challenge to the Air Force decision, our function in reviewing competitive range determinations is not to reevaluate the proposal and make our own determination of its merits, but to examine the agency evaluation as a whole and ensure that it has a reasonable basis. MGM Land Co.; Tony Western, B-241169; B-241169.2, Jan. 17, 1991, 91-1 CPD ¶ 50.

TUI also raises several other issues in its request for reconsideration, and argues that if our Office had needed more information about its initial protest, we should have asked the protester to provide additional information. As an initial matter, TUI, not our Office, bears responsibility for providing a legally and factually sufficient statement of its grounds for protest. See 4 C.F.R. §§ 21.1(c)(4) and 21.1(e). In addition, as before, TUI's allegations--such as its claims that the agency evaluators were unqualified to review the technical proposals, and that TUI was improperly denied a contract under the Small Business Administration's 8(a) program for an interim contract for these services--are not timely filed at this late date.

The request for reconsideration is denied.



Ronald Berger  
Associate General Counsel