



**Comptroller General
of the United States**

Washington, D.C. 20548

B-228573.5

August 12, 1988

R. A. Grosselfinger, President
Inter-Controls, Inc.
6202 Stardust Lane
Bethesda, Maryland 20817

Dear Mr. Grosselfinger:

I refer to your June 7 and June 28, 1988 letters concerning your request that we consider your protest on the merits. In order to adequately reply, I believe it is necessary to marshall all of the relevant factors which have led to our previous conclusion not to consider your case further. These are:

1. On October 13, 1987, you filed a protest against the award of a contract under request for proposals No. N62269-87-R-0020 stating that you would furnish the basis for protest by October 20. Your protest was dismissed by notice dated October 21, 1987. The protest details were not received here until December 17.
2. On October 21, 1987, you received the documentation which you allege provided you with the basis for protest.
3. On December 7, 1987, you wrote to Senator Sarbanes, not to this Office. That letter included a letter addressed to the General Accounting Office which set forth the detailed basis of your protest.
4. On December 9, 1987, Senator Sarbanes forwarded your correspondence to our Office of Congressional Relations (OCR). That letter was received on December 17, 1987, as evidenced by the OCR time/date stamp.

5. On January 21, 1988, the General Counsel replied to Senator Sarbanes and explained why the October 13 protest was dismissed and why the December 7 correspondence enclosed with your letter to him did not qualify as a timely protest.
6. On February 10, 1988, you requested reconsideration on the basis that the October 21 dismissal was premature and because you believed that the overriding purpose of our bid protest regulations was to assure proper procurement procedures, and not to expeditiously dispose of protests without regard to their validity. You requested that we reconsider your protest in accordance with the exception to our timeliness requirements "for good cause shown . . . where [GAO] determines that a protest . . . significant to the procurement system" exists.
7. On March 2, 1988, we affirmed our dismissal because there was no showing of a compelling reason beyond your control which prevented you from filing your protest within 10 working days from the time you received the documentation from the Navy on October 21; such a showing is necessary for the good cause exception to be invoked. The decision also noted that you mentioned the significant issue exception to our timeliness rules, but did not provide any allegation or evidence that the protest fell within the exception.
8. On March 15, 1988, you again requested reconsideration because you believed the December 7 letter, i.e., the actual untimely protest, provided ample evidence of a significant issue.
9. On April 27, the General Counsel again declined to consider your untimely protest, and explained the meaning of the significant issue exception to the timeliness requirement.
10. On June 7 and June 28, 1988, you requested the Comptroller General to personally review your protest because you believed that the Office of the General Counsel had attempted to evade consideration of your protest. You stated that these actions [of the General Counsel] "believe good faith," and requested that you be accorded the "twice denied arbitrariness type conference."

Our Bid Protest Regulations contained in title 4 of the Code of Federal Regulation, Part 21, govern our handling of protests and impose requirements on all parties, that is, the agencies involved, the protesters and other interested parties that participate in the protest. These regulations, published in 1985 to implement the statutory requirements of the Competition in Contracting Act of 1984 (CICA), are founded upon the Bid Protest Procedures which were originally published in 1971. Although CICA imposes strict time limits on us and the agencies involved, the 10-day filing requirement has been in effect since 1975 and has been strictly construed since that time. I do not view the application of that long standing requirement as either a deliberate attempt to evade consideration of your protest or as belying good faith by the General Counsel or his staff.


An agency must by statute provide us with a complete documented report within 25 days of notice of the protest; therefore, we do not accept conditional protests since the clock begins to run against the agency when the agency is notified by us that the protest is filed. You have to date never explained why you chose to protest through Senator Sarbanes' office by letter dated December 7, more than a month beyond the filing deadline. Although you may not actually have known of the filing requirements, our regulations were published in the Federal Register and are codified in the Code of Federal Regulations and consequently all parties, as a matter of law, are held to constructive knowledge of their contents. This is not a new or arbitrary concept--it has been applied to untimely protests since 1972. Similarly, application of the significant issue exception to the timeliness requirements is based on 16 years of precedent. That exception is infrequently applied because it primarily concerns legal issues of significant importance. In deciding whether a legal issue presented by a protester's initial submission is significant, we look at whether the issue has been previously considered and whether the issue is one of importance to the procurement community. While we understand that allegations of improper proposal evaluation are important to the protester making these allegations, we do not consider such allegations as raising an issue that is of widespread importance to the procurement community such that use of the significant issue exception is warranted. Thus, based on 16 years of precedent, we saw no reason to invoke the exception in this case.

We also do not convene arbitrarial type conferences simply because it is not our purpose to arbitrate a dispute solely between the agency and a protesting party. Thus, if a protest is untimely and not subject to consideration under one of the two very limited exceptions to the timeliness

requirements, we will not conduct a conference, since from our perspective no useful purpose would be served as no decision on the merits will be forthcoming. In other words, a conference is an adjunct to a timely protest, and not a substitute for an untimely one.

I believe that all of the factors you have raised have been fairly and fully considered, and it is my opinion that your protest was properly dismissed.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton L. Josten".

Acting Comptroller General
of the United States

cc: Senator Paul S. Sarbanes