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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-186988

**DATE:** October 18, 1976

**MATTER OF:** GTE Sylvania, Incorporated - Reconsideration

**DIGEST:**

Prior decision, holding that protest was untimely filed and ineligible for consideration on the merits, is affirmed since protester has not presented additional facts or arguments suggesting prior decision was erroneous.

GTE Sylvania, Incorporated (GTE) has requested reconsideration of our decision of September 7, 1976, B-186988, in which we held that its protest was untimely filed and ineligible for our consideration on the merits.

By way of background, GTE was advised by a National Aeronautics and Space Administration (NASA) letter of June 9, 1976, of the rejection of its proposal and the principal reasons therefor. A debriefing was conducted on June 29, 1976, during which the foregoing action was discussed in depth. On July 20, 1976, our Office received GTE's protest against the rejection of its proposal, and we determined that it was untimely filed pursuant to 4 C.F.R. 20.2(b)(2)(1976) since GTE failed to file its protest within 10 (working) days after the basis for the protest was known or should have been known.

In its request for reconsideration, GTE repeats its arguments, made in its earlier submissions, that the protest should be considered timely because it was based on an imminent award at a higher price to GTE's sole competitor, and that the 10-day period should be computed from the date of award. We rejected this argument in our decision, holding that the protest was clearly against the exclusion of GTE's proposal from the competitive range. We concluded that a review of GTE's submissions indicated its basic position was that NASA acted arbitrarily in finding deficiencies in GTE's alleged "substantially conforming" proposal under NASA request for proposals No. 5-86460/187 and that, had adequate technical discussions been held, the deficiencies would have been cured. Therefore, we viewed the protest as actually founded on objections to proposal evaluation and adequacy of discussions, and not on the fact that award was to be made at a higher price to another offeror. Since GTE was aware of that basis for protest not later than June 29, 1976, we held that the 10-day period must be computed from that date.

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GTE's position was carefully considered in our initial review of this matter. GTE has not presented any facts or arguments in addition to those we initially considered which suggest that our conclusion was erroneous. Accordingly, we see no reason to alter our prior conclusion.

GTE contends that this result would preclude NASA's furnishing a report on the merits, thereby preventing GTE from acquiring detailed information in response to its allegation that its sole competitor was favored with "extensions of time and additional information" unavailable to GTE. It states that the period for filing a protest cannot commence until it receives that information.

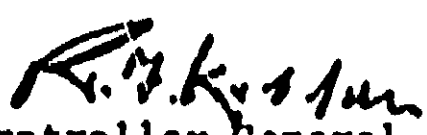
There is no merit to this argument. The information GTE seeks is not relevant to the timeliness of the protest it filed. Should GTE later obtain information (through a Freedom of Information Act request) which provides it with additional grounds for protest, it may file a timely protest on the basis of that information.

GTE also claims that we failed, in our prior decision, to consider the "significant procurement issue" raised by the protest that would possibly excuse its untimely filing pursuant to 4 C.F.R. 20.2(c). GTE characterizes this issue as the preferential selection of a sole competitor at a higher price through arbitrary agency action. In its original protest, GTE described the matter as "unbridled agency discretion" in the proposal evaluation.

Contrary to GTE's contention, our decision in fact addressed the alleged "significant procurement issue." We determined that the objections raised did not constitute such an issue because they were neither of wide-spread interest nor did they go to the heart of the competitive procurement process. We affirm that conclusion.

Finally, GTE contends that our decision failed to consider a supplementary submission made in its protest letter of August 19, 1976, in which GTE protested other aspects of the evaluation which it learned of at the June 29 debriefing. This is incorrect. Our decision specifically referred to that supplemental submission. Furthermore, the matters contained therein, as indicated in the decision, were also untimely filed.

In view of the above, our prior decision is affirmed.

  
Acting Comptroller General  
of the United States