

PLCG

DECISION



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

9428

FILE:

DATE: March 14, 1979

B-193050
MATTER OF:

DLG-00723

Eglen Hovercraft, Incorporated--Reconsideration

DIGEST:

[Request For Reconsideration of Protest That Was Dismissed as Untimely]

Where protester merely reiterates its prior arguments and does not indicate any error of fact or law in prior decision, request for reconsideration is denied.

Eglen Hovercraft, Incorporated (Eglen), requests reconsideration of our decision Eglen Hovercraft, Incorporated, B-193050, January 22, 1979, 79-1 CPD 39, (208) dismissing its protest as untimely against the award of a contract under solicitation No. DAAH01-78-R-0146, issued by the Department of the Army (Army), Redstone Arsenal, Alabama. ABC00020

Eglen contends that its protest was not objectively reviewed on its merits but was "summarily written off as untimely" by our Office. Eglen argues that the specific issues raised should be considered since they are significant to procurement practices and procedures, citing section 20.2(c) of our Bid Protest Procedures (Procedures), 4 C.F.R. part 20 (1978). (201)

We held in our prior decision that although our Procedures do permit consideration of untimely protests where issues are of widespread interest to the procurement community (principle of broad application which has not been considered before), we saw nothing in the present case to warrant invoking this exception. Eglen has presented no new evidence or legal argument which convinces us that our earlier decision in this regard was in error.

Eglen's initial protest raised four contentions: (1) the Army erred in issuing amendment P0004 (violation of Defense Acquisition Regulation § 3-805.4 (1976 ed.); (2) requests for extensions of offers (208)

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were either not given each time in writing or were not given until Eglen called the Army and asked if it should extend its offer; (3) misinformation was given to Eglen regarding quantities of items to be purchased by the Army; and (4) if the options were to be exercised, the award may not have been made to the lowest offeror. The request for reconsideration concerns the first three contentions.

With regard to the first contention, Eglen initially filed a protest with the Army by letter dated May 12, 1978. By letter dated June 2, 1978, the contracting officer informed Eglen that "Amendment 0004 as issued will remain effective and unchanged." Eglen subsequently filed its protest with our Office on September 29, 1978. Our Office dismissed this issue as untimely because the June 2 letter to Eglen in effect denied the protest and was the initial adverse agency action. We further stated that in order for Eglen's protest to have been considered timely, it should have been filed within 10 working days after receipt of the June 2 letter.

Eglen contends in its request for reconsideration that the Army did not "directly" answer its protest until 2-1/2 months after it was filed with the contracting agency. Eglen argues that the June 2 letter did not deny its protest because (1) there was no mention of the word "protest" in the letter, and (2) the Army notified a United States Senator by a June 9, 1978, letter that Eglen "will be promptly advised when a decision is made." Eglen further argues that the same Senator was informed by letter dated July 26, 1978, that Eglen had been notified by a June 2 letter that its protest was without merit. Eglen claims it never received that letter.

The June 2 letter, a copy of which was attached to a letter of October 4, 1978, in support of Eglen's initial protest, stated:

"Evaluation of your letter of protest, dated 12 May 1978, covering Amendment 0004 of RFP DAAH01-78-R-3146 has been completed by this Command.

"This is to reaffirm that Amendment 0004 as issued will remain effective and unchanged."

The letter reminded Eglen that the closing date for receipt of proposals was June 9, 1978.

Even if Eglen did not receive the June 2 letter, the receipt of initial proposals on June 9 (which Eglen submitted) without changing the RFP constituted adverse agency action rendering the protest filed with our Office more than 10 working days thereafter untimely under § 20.2(a) of our Procedures. See, Lamson Division--reconsideration, B-190752, January 31, 1978, 78-1 CPD 82. Consequently, we can perceive of no basis for reversing our prior decision concerning the first contention. @08

Also, after carefully considering Eglen's request for reconsideration of its second and third contentions, we find that Eglen essentially reiterates the facts and arguments previously made to us which were thoroughly considered by our Office in our January 22, 1979, decision. Eglen has not presented evidence demonstrating any error of fact or law in the original decision. Therefore, we find there is no basis for our reconsideration of this matter. See, Bunker Ramo Corporation--Request for Reconsideration, B-187645, August 17, 1977, 77-2 CPD 124; 4 C.F.R. § 20.9(a) (1978). @08

Eglen mentions that its request to the Army of November 21, 1978, for certain information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(3) (1976), has not yet been met. We have held in prior decisions that where records sought to be disclosed are agency records, our Office is without authority under the FOIA to determine what records must be released by other Government agencies and therefore the request must be made to the agency. Once a party has requested disclosure from the agency and such request has been denied, his sole remedy is by suit in the United States District Court. Systems Research Laboratories, Inc.--Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341. @06

R. F. Eglen
Deputy Comptroller General
of the United States @08