

Proc II

DECISION



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

10,711

FILE: B-194790

DATE: July 11, 1979

MATTER OF: Sierra Research Corporation--

[Request for Reconsideration]

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DIGEST:

Prior decision is affirmed because protester has not shown that decision dismissing protest as untimely was based on error of fact or law.

Sierra Research Corporation (Sierra) requests reconsideration of our decision in Sierra Research Corporation, B-194790, June 6, 1979, 79-1 CPD___, regarding alleged defects in Solicitation N66032-78-R-0004, issued by the Department of the Navy, Automatic Data Processing Selection Office (Navy). Our decision concluded that Sierra's protest was untimely because after it filed an initial protest on January 9, 1979 with the Navy, it did not file a subsequent protest with our Office until May 4, more than 10 days after the closing date for receipt of initial proposals.

Under our Bid Protest Procedures, when a protest is filed initially with a contracting agency, a subsequent protest to GAO must be filed within 10 days after the protester has actual or constructive knowledge of initial adverse agency action on its protest. 4 C.F.R. § 20.2(a) (1979). As our prior decision noted, expiration of the time for receipt of initial proposals without corrective action being taken in response to a protest is sufficient to place a protester on notice that his objections to a solicitation have been rejected. General Leasing Corporation--Reconsideration, B-193527, March 9, 1979, 79-1 CPD 170.

Nevertheless, Sierra suggests that it did not have notice of initial adverse agency action prior to April 20. Pointing out that the Navy acknowledged receipt of the January 9 protest by advising Sierra that the suggested "revisions are currently being reviewed," Sierra argues that it was entitled to assume that the disputed issues

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were negotiable. According to Sierra, it only learned otherwise when the Navy requested that Sierra correct deficiencies in its proposal.

We do not agree. The Navy's January 10 acknowledgment letter stated that revisions were being considered. Sierra was not told that revisions would be made. Moreover, the January 10 letter extended the closing date for receipt of proposals by two months, from February 2 to April 2, 1979, suggesting that the Navy planned to review the solicitation defect before the closing date. When the new closing date for receipt of proposals arrived nearly three months later without the Navy having corrected the alleged defects, Sierra knew or should have known that the solicitation would not be amended. This, in our opinion, was sufficient to place Sierra on constructive notice of adverse agency action on its protest.

Consequently, we find Sierra has not shown that our prior decision was based on any error of fact or law, and that decision is affirmed.


Deputy Comptroller General
of the United States