

Roberts  
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**DECISION**



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

**FILE:** B-208884.2

**DATE:** December 14, 1982

**MATTER OF:** Pulaski Furniture Corporation--Request for  
Reconsideration

**DIGEST:**

1. Protester's post-award objection to the Government's award of a furniture contract to another firm under an invitation for bids, instead of purchasing furniture under protester's Federal Supply Schedule contract, is untimely because it concerns an alleged solicitation impropriety which should have been raised prior to bid opening. The fact that protester was not a bidder is of no consequence since the firm clearly knew the subject of the invitation as well as the bid opening date.
2. Untimely raised issues concerning whether or not the procuring agency should have used the protester's Federal Supply Schedule contract instead of a competitive procurement concern matters considered on the merits in previous GAO decisions and therefore are not "significant" issues under GAO Bid Protest Procedures.

Pulaski Furniture Corporation requests reconsideration of Pulaski Furniture Corporation, B-208884, September 23, 1982, 82-2 CPD 265, in which we dismissed, as untimely, Pulaski's protest of the award of a contract to Hertz Furniture Systems Corporation under invitation for bids (IFB) No. F08650-82-B-A042 issued by the Air Force for lounge chairs and sofas. In dismissing Pulaski's protest, we held that Pulaski's post-award objection to the Air Force's award to Hertz in lieu of a purchase under Pulaski's Federal Supply Schedule (FSS) contract was untimely because it concerned an alleged solicitation impropriety of which Pulaski was aware prior to bid opening, and which it therefore was required to, but did not, raise before that date. Pulaski submits that our determination of untimeliness was

predicated on a factual error in that Pulaski was not an "unsuccessful bidder" as indicated in the decision. Alternatively, Pulaski argues that its protest issues warrant consideration on the merits under the "significant issue" exception to the timeliness rules of our Bid Protest Procedures.

We affirm the prior decision.

From the documentation submitted with its original protest, it appeared that Pulaski was an unsuccessful bidder under the IFB. In fact, Pulaski, a large business, did not submit a bid under the IFB, which was set aside for small business participation. This, however, does not change the fact that Pulaski's protest was untimely filed.

Our Bid Protest Procedures require that alleged improprieties in any solicitation which are apparent prior to bid opening must be protested before that date to be considered on the merits. 4 C.F.R. § 21.2(b)(1) (1982).

As our decision noted, it is clear from Pulaski's protest correspondence that it was aware of the terms of the IFB and thus its basis for protest--the Air Force's decision not to procure under Pulaski's FSS contract--as early as July 16, 1982, when the Air Force, at Pulaski's request, provided that firm with an illustration of the furniture to be competitively procured under the small business IFB. In these circumstances, Pulaski's failure to file its protest prior to the IFB's bid opening on July 27, despite its knowledge of the basis for protest before that date, rendered its post-award September 1 protest untimely and not for consideration on the merits. The fact that Pulaski was not a bidder under the IFB is of no consequence in this circumstance since the firm clearly knew the subject of the IFB, as well as the bid opening date. See Otis Elevator Company, B-193046, July 24, 1979, 79-2 CPD 47.

Pulaski argues that the issues it raised concerning when an agency is required to procure from an FSS contractor are significant to procurement practices and procedures and, therefore, even if they are untimely they should be considered on their merits under the "significant issue" exception of our Bid Protest Procedures 4 C.F.R. § 21.2(c).

For the "significant issue" exception to our timeliness rules to be invoked, the subject matter of the protest must not only evidence a principle of widespread interest or importance to the procurement community, see, e.g., Willamette-Western Corporation; Pacific Towboat & Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 59 Comp. Gen. 338 (1980), 80-1 CPD 225.

We have numerous prior decisions setting forth the basic principles governing the use of FSS contracts by procuring agencies. See, e.g., Pulaski Furniture Corporation--Reconsideration, E-188440, January 6, 1978, 78-1 CPD 10. Thus, we do not consider the question of whether the procuring agency should have used Pulaski's FSS contract in this instance a "significant issue" within the meaning of our Bid Protest Procedures.

Our prior decision is affirmed.

*Milton J. Fowler*  
for Comptroller General  
of the United States