

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

50845

FILE: B-183534

DATE: June 30, 1975 97/31

MATTER OF: Industrial Technological Associates, Inc.

### DIGEST:

Request for reconsideration of prior decision dismissing protest as untimely, is denied since protester does not advance any additional facts or legal arguments which show that earlier decision was erroneous. Moreover, protest does not qualify for consideration pursuant to exceptions to timeliness rule in 4 C.F.R. § 20.2(b) since protest was not delayed by "good cause" and does not raise "issues significant to procurement practices or procedures."

Industrial Technological Associates, Inc. (ITA) requested reconsideration of our decision B-183534, May 6, 1975, wherein this Office held its protest untimely under a solicitation issued by Picatinny Arsenal.

ITA had alleged that the stated evaluation criteria of the RFQ gave a great deal of weight to considerations that could only be judged subjectively. ITA also alleged that the issuance of the subject solicitation did not change the original intent of the procuring activity, as evidenced by a notice in the Commerce Business Daily (CBD), subsequently rescinded, to make a sole-source award to Booz Allen Applied Research (BAAR). Therefore, ITA questioned whether the proposal of any contractor, other than BAAR, could receive an unbiased evaluation.

We held that since on January 22, 1975, ITA had discussed its doubts with personnel from Picatinny Arsenal concerning their alleged inability to render an unbiased evaluation of proposals, our receipt of ITA's protest on March 28, 1975, was beyond the limit of 5 days after ITA knew the basis for its protest. Similarly, since ITA's allegation that the solicitation contained improper evaluation criteria was filed in our Office over 2 weeks after the due date for best and final offers, that allegation was also untimely under our bid protest procedures and not for consideration on its merits.

ITA objects to our dismissal of its protest, alleging that it followed the procedure suggested in 4 C.F.R. § 20.2(a) (1974 ed.) that protesters seek resolution of their complaints initially with

the contracting agency. ITA explains that at its meeting on January 22, 1975, with personnel from Picatinny, ITA was advised that a fair and unbiased evaluation would be made. ITA states that "we chose to give them /Picatinny/ the benefit of the doubt" and asks whether it is to be faulted for not protesting at that time. ITA further maintains that it was only after a series of telephone calls on March 20, 24 and 26 that it realized that Picatinny was merely performing a "ritual" to eliminate competition in order to make a sole-source award to BAAR.

Decisions of the Comptroller General are subject to revision upon reconsideration if a material mistake of fact or law is alleged and proven. Fischer Engineering and Maintenance Co., B-179193, November 11, 1974; Nartron Corp., B-178224, B-179173, November 12, 1974. The crux of ITA's present argument is that they did not have a basis for protest until March 26 when ITA allegedly realized that the competitive procedures were merely a sham. However, ITA's fundamental objection continues to be that Picatinny could not render an unbiased evaluation. We are of the opinion that such an objection would have had to have been protested to this Office immediately upon its recognition in order for any meaningful relief to have been achieved. For example, had ITA's objection been reasonably grounded in fact, the procuring activity's evaluation team could have been changed prior to negotiations in order to assure an unbiased evaluation. For ITA to have participated in the procurement up through the time for submission of best and final offers, before objecting to the possibility of an institutional bias in favor of another offeror, was to have waited too long.

Moreover, our informal inquiries reveal that with the exception of the meeting of January 22, 1975, ITA made no additional attempts to resolve its objections with the agency. Consequently, since ITA advances no additional facts nor offers any arguments of law which suggest that our initial decision was in error, we must sustain our earlier position that ITA's protest was untimely.

ITA calls our attention to 4 C.F.R. § 20.2(b) (1974) which states that:


"The Comptroller General for good cause shown or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely."

In 52 Comp. Gen. 20, 22 (1972), we held that:

" 'Good cause' varies with the circumstances of each protest, although it generally refers to some compelling reason, beyond the protestor's control, which has prevented him from filing a timely protest. \* \* \* 'Issues significant to procurement practices or procedures' refers not to the sum of money involved, but to the presence of a principle of widespread interest."

We are not inclined to view a protest of this nature as coming within this provision.

Accordingly, our decision of May 6, 1975, is affirmed.

  
Deputy Comptroller General  
of the United States