

DECISION



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

50988
97478

FILE: B-184105

DATE: August 19, 1975

MATTER OF: United States Steel Corporation, USS Chemicals
Division; Flight Systems, Inc., Rocket Jet/ARD
Division

DIGEST:

1. Prior decision dismissing as untimely protests against alleged impropriety apparent in RFP which were filed after closing date for receipt of proposals is affirmed. Even if the initial protest was filed before the closing date, the consideration of proposals without taking the corrective action urged by protester is considered to be "adverse agency action" for the purposes of GAO's bid protest procedures. Protest filed with this Office 11 weeks after the closing date is therefore untimely.
2. Untimely protest is not considered on the merits in the absence of a showing that the late filing was attributable to "good cause" and in the absence of a principle of widespread interest.

United States Steel Corporation (USS) has requested that we reconsider our decision United States Steel Corporation, USS Chemicals Division, B-184105, July 10, 1975, in which we dismissed its protest as untimely filed.

As we noted in our earlier decision, the protest arose under request for proposals No. F41608-75-31962, issued on December 20, 1974, for Survival Kit Containers for B-52 aircraft. March 17, 1975, was the deadline for receipt of initial proposals and upon March 31 best and final offers were received. USS advised the Air Force on May 23, 1975 that it considered paragraph 3.3 of the RFP purchase description to be ambiguous, inconsistent, misleading and materially deficient and requested that it be either deleted or revised. By letter of May 29, 1975 the Air Force advised that it did not consider it necessary to clarify or revise the provision. USS filed a protest with our Office on June 4, 1975. Noting that our procedures 4 C.F.R. § 20.2(a)(1975), require that such protests be filed with the contracting agency or this Office prior to the closing date for receipt of proposals, we dismissed the protest as untimely filed.

In its request for reconsideration, USS has drawn our attention to certain events which transpired prior to May 23, 1975, which it states show compliance with our procedures for the timely filing of bid protests. Our re-examination of the record does not persuade us that the protest was timely filed.

The record shows that at a pre-proposal conference held on January 15 and 16, 1975, USS requested that paragraph 3.3 of the RFP be deleted. This request was reiterated in a letter dated January 20, 1975, from USS to the procuring activity. Although USS states that its letter of January 20 was never answered, the file provided us by the Air Force contains a copy of a message dated January 28, 1975, in which the procuring activity advised USS that "Decision has been made to retain Para 3.3 * * * as most fair and equitable means of competition for the procurement." Whether or not this message was received by USS, it is clear that the firm participated in the procurement through submission of best and final offers. As recited in our decision of July 10, 1975, USS did not question the propriety of paragraph 3.3 again until May 23, which was approximately 11 weeks after receipt of initial proposals and 9 weeks after submission of best and final offers.

The reasons advanced by USS in support of its contention that paragraph 3.3 should be deleted have varied and the protester's treatment of its January 20 letter has been inconsistent. In initially protesting to our Office, USS characterized its January 20 letter as "not relevant to this protest," yet in its request for reconsideration USS relies upon the letter as showing that it protested prior to receipt of initial proposals. We believe the protest was untimely filed regardless of whether the January 20 letter is considered part of the instant protest.

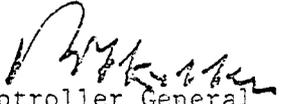
If the January 20 letter is not considered relevant to this protest, which was the protester's initial position, the protest was not filed until May 23, 1975, well after the date for receipt of initial proposals. If the January 20 letter does constitute the initial protest and USS did in fact receive the procuring activity's message of January 28, USS failed to timely file its protest with our Office after that manifestation of adverse agency action. Finally, if the January 20 letter is considered as part of this protest and we accept the protester's statement that it did not receive the agency's January 28 response, the protest to our Office was untimely because it was filed several weeks after adverse agency action. In this connection, we have held that the

consideration of proposals by the procuring activity without taking complete corrective action on the protested items, is an "adverse agency action" within the meaning of our bid protest procedures. Advance Conversion Devices Co., B-182679, February 2, 1975. Thus, the adverse action occurred on March 31, 1975, and the protest which was not filed with our Office until June 4 was clearly untimely.

Finally, USS requests that we consider the case on its merits pursuant to 4 C.F.R. § 20.2(c) (1975) which allows the Comptroller General to consider untimely protests "for good cause shown" or where the "protest raises issues significant to procurement practices or procedures."

"Good cause" has been interpreted to refer to some compelling reason, beyond the protester's control, which prevented it from filing a timely protest. 52 Comp. Gen. 20 (1972); 53 Comp. Gen. 932, 947 (1974). No such good cause has been shown here. Furthermore, we do not see the presence of a principle of widespread procurement interest. 53 Comp. Gen. 932 (1974).

Accordingly, our decision of July 10, 1975, is affirmed.


Acting Comptroller General
of the United States