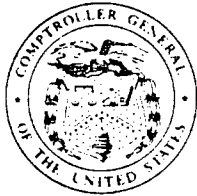


DECISION

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

60104

FILE: B-184655

DATE: October 30, 1975

97591

MATTER OF: Fairchild Industries, Inc.--request for reconsideration

DIGEST:

1. Upon request for reconsideration, prior decision holding protest untimely is affirmed since protester does not advance any additional facts or legal arguments which show that earlier decision was erroneous, or that protest is for consideration pursuant to exception to timeliness rule as it does not raise "issues significant to procurement practices or procedures."
2. Protest on basis that award to offeror determined low by use of questioned price evaluation formula will not result in lowest ultimate overall cost to Government contrary to ASPR is untimely since alleged deficiency relates to matter which was required to be raised prior to closing date for receipt of proposals.

Fairchild Industries, Inc. (Fairchild), requests reconsideration of our decision B-184655, September 8, 1975, which denied its protest under request for proposals (RFP) No. F42600-75-R-6990, issued by the Department of the Air Force, Directorate of Procurement & Production, Hill Air Force Base, Utah, for the furnishing of services and supplies in the accomplishment of programmed depot maintenance of F-4 type aircraft. Fairchild contended in its initial protest that the price evaluation formula contained in the RFP is inequitable and deficient.

We held that since Fairchild did not protest the allegedly inequitable and deficient price evaluation formula contained in the RFP, prior to the closing date for receipt of proposals, the protest was untimely under section 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)), and not for consideration notwithstanding Fairchild's allegation that the protest addressed issues significant to procurement practices or procedures. In that decision we noted that Fairchild had prior knowledge of the use of the type of price evaluation formula in question from past procurements and should have been prepared to submit a timely protest rather than submitting a proposal and protesting after the closing date for receipt of proposals. We also concluded that the protest was not for consideration under our exception to the timeliness rule as it did not involve a principle of widespread interest.

Fairchild requests reconsideration on the basis that the protest does, in fact, come within section 20.2(c) of our Bid Protest Procedures, supra, since the protest raises issues significant to procurement practices and procedures. Fairchild's assertion in this regard is based upon the following: (1) the contract involves Government expenditure of millions of dollars; (2) the evaluation formula as used by the Air Force and Navy in the procurement of these services; and (3) Fairchild has asked the House Subcommittee on Appropriations for Defense and various Department of Defense offices to consider the matter.

It is our view that the use of the price evaluation formula in this particular procurement does not raise any issues significant to procurement practices or procedures. "Issues significant to procurement practices or procedures" refers to the presence of a principle of widespread interest and not necessarily to the sum of money involved. 52 Comp. Gen. 20, 23 (1972). There have been instances in which our Office has determined that although a protest was filed untimely, the issue presented was significant to the entire procurement community and therefore was considered on the merits. See, for example, Fiber Materials, Inc, 54 Comp. Gen. 735 (1975), 75-1 CPD 142, where in a research and development procurement individually tailored statements of work for the two offerors in the competitive range precluded one offeror from competing on an equal basis, contrary to the basic principles of the law and regulations governing the conduct of procurements; Willamette-Western Corporation; Pacific Towboat & Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, where the release of a draft request for proposals to the incumbent contractor 5 months before other competitors received the official RFP resulted in partiality toward the incumbent to the prejudice of competitors, contrary to the concept implicit in negotiated procurements and statutory requirement for maximum competition; and 52 Comp. Gen. 905 (1973), where pursuant to the invitation for bids the addition of a \$1,000 evaluation factor (which equaled nearly 50 percent of the evaluated price) penalized all potential suppliers except the incumbent contractor, thereby precluding effective competition.

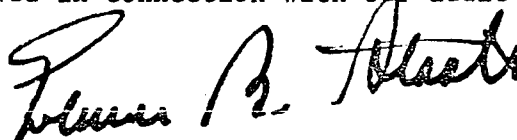
While this matter may be of importance to some of the aircraft maintenance community, in the context of procurement principles and procedures generally, the issue is not one of widespread interest since the questioned formula is apparently used only in the unique situation here where a significant portion of the work is unknown at

B-184655

the time of award. Whereas, in the examples cited above, the complained of practice or procedure could apply to procurements generally. Since Fairchild advances neither additional facts nor offers any arguments of law that demonstrate our initial decision was in error, our decision of September 8 is affirmed.

By letters dated September 16 and October 24, 1975, Fairchild has also protested that since the apparent low offeror under the subject RFP will be determined on the basis of the questioned evaluation formula, award to that offeror will not result in the "lowest ultimate overall cost" to the Government contrary to Armed Services Procurement Regulation § 3-801.1 (1974 ed.). Since the protest against award on this basis is substantially the same as the basis for Fairchild's earlier protest, it is untimely and will not be considered on the merits. J. K. Rishel Furniture Co., B-183817, September 17, 1975.

While this matter is not for consideration in the context of a bid protest, it will be reviewed in connection with our audit functions.



Comptroller General
of the United States