

DECISION

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

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FILE: B-185394

DATE: May 18, 1976

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MATTER OF: COMTEN

DIGEST:

Prior decision dismissing as untimely filed protest against solicitation provision restricting maintenance to four vendors, not including protester, is affirmed, since fact, first brought out in request for reconsideration, that similar provisions have been used by another procuring agency does not establish that issue raised is significant issue under GAO Bid Protest Procedures.

COMTEN has requested reconsideration of our decision COMTEN, B-185394, February 24, 1976, 76-1 CPD 130, in which we dismissed as untimely filed a protest against an allegedly unduly restrictive provision in request for proposals No. F05602-76-R-0001, issued by the United States Air Force Accounting and Finance Center (AFAFC), Denver, Colorado, for cathode ray tubes, controllers, and printers. COMTEN does not dispute the untimeliness of its protest; rather, it asserts that this Office "seriously erred" in refusing to consider the protest as raising an issue significant to procurement practices under section 20.2(b) of our Bid Protest Procedures.

The protest concerned AFAFC's use of a provision entitled "Maintenance Vendor Limitation", which limited to four the number of authorized maintenance sources for the controllers. COMTEN was not one of these four sources. COMTEN claimed that this requirement for third party maintenance, coupled with a "penalty" provision for equipment malfunction, prevented it from competing and constituted an improper restriction on competition.

Before dismissing COMTEN's untimely protest we considered COMTEN's assertion that its protest raised a significant issue. We held that since the vendor limitation clause concerned only one line item (the controllers), had been used in only two procurements and would not be used "beyond the activity involved in this case", the issue raised was not a significant issue because it was not a matter of widespread interest and "it would not serve a useful purpose to decide it."

COMTEN claims that we erred in believing that the future use of the maintenance vendor clause would be so limited. It points to a statement by the Department of the Air Force that "the need for limiting vendor maintenance sources is expected to continue for the foreseeable future." It also refers to two other procurements for Automatic Data Processing Equipment (ADPE) for Navy, Air Force and NASA (National Aeronautics and Space Administration) components initiated by the General Services Administration in which similar restrictive provisions were used. COMTEN therefore contends that the matter has proven to be one of widespread interest and should be considered "significant."

We remain of the view that COMTEN's protest does not raise a significant issue. As we pointed out in our prior decision, the significant issue exception to the timely filing requirement must be exercised sparingly if our timeliness standards are not to become meaningless. We have considered issues to be of widespread interest and therefore "significant" if they "go to the heart of the competitive procurement process", Willamette-Western Corporation, et al., 54 Comp. Gen. 375, 376 (1974), 74-2 CPD 259, such as where individually tailored statements of work prevented one of two offerors from effectively competing, Fiber Materials, Inc., 54 Comp. Gen. 735 (1975), 75-1 CPD 142; where partiality toward an incumbent contractor prejudiced competitors, Willamette-Western Corporation, et al., supra; where an evaluation factor penalized all potential offerors but the incumbent, 52 Comp. Gen. 905 (1973); and where it was alleged that "purposefully grossly misleading information" was included in an RFP. Inflated Products Company, Inc., B-183947, March 11, 1976, 55 Comp. Gen. _____, 76-1 CPD 170. On the other hand, we have found in a plethora of cases that issues untimely raised were not of such widespread interest so as to warrant invoking the significant issue exception. See, e.g., The Garrett Corporation, B-186086, April 2, 1976, 76-1 CPD _____; Eocom, Inc., B-185345, March 25, 1976, 76-1 CPD 196; Fairchild Industries, Inc.--request for reconsideration, B-184655, October 30, 1975, 75-2 CPD 264; Norris Industries, B-182921, July 11, 1975, 75-2 CPD 31; 52 Comp. Gen. 20 (1972).

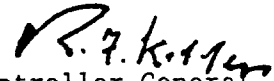
Here, the fact that the maintenance vendor provision placed some restriction on competition does not automatically indicate that the use of the provision goes to the heart of the competitive procurement process, since it is well settled that procuring activities may impose a wide variety of reasonable restrictions on

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competition when their needs so require. See, e.g., 53 Comp. Gen. 102 (1973) and Hoffman Electronics Corporation, 54 Comp. Gen. 1107 (1975), 75-1 CPD 395. Furthermore, even though COMTEN now brings to our attention, for the first time, the existence of two GSA procurements involving the use of a similar (but, in at least one case, less restrictive) provision, we do not believe that it would serve any useful purpose for us to consider the COMTEN protest on the merits since, as indicated, the clauses in the various procurements are not the same and the propriety of their use would depend upon the particular facts and circumstances of each procurement. Thus, the fact alone that a procuring activity other than AFAFC has utilized some sort of maintenance vendor restriction does not, in our opinion, establish the issue raised by COMTEN as one of widespread interest to the procurement community.

Since the Air Force has stated that AFAFC intends to impose the same restriction in future procurements, it appears that COMTEN will have subsequent opportunities to protest if it desires to do so. See Fairchild Industries, Inc., B-184655, September 8, 1975, 75-2 CPD 140.

Our prior decision is affirmed.


Deputy Comptroller General
of the United States