

Proc II

DECISION



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

10,228

FILE: B-194086

DATE: May 23, 1979

MATTER OF: Mayfair Construction Company

ALGO 0230

DIGEST:

Protest is dismissed where protester's request for preliminary injunction is denied, and protester has appealed decision. [Material issues involved in protest are in litigation and court has not indicated any interest in obtaining GAO decision.]

Mayfair Construction Company (Mayfair) protests the contracting officer's determination that the firm is nonresponsible because of a lack of business integrity. Mayfair contends that the contracting officer's finding of nonresponsibility is tantamount to debarment. The protester asserts that in making the determination of nonresponsibility the contracting officer may not rely on information received from the Assistant United States Attorney concerning an ongoing investigation of the firm's alleged criminal activities.

Mayfair filed a civil action in the United States District Court for the District of Columbia seeking a preliminary injunction enjoining the Corps of Engineers from taking any action regarding the firm's nonresponsibility without providing a hearing. Mayfair also sought an award of this contract as the low bidder. The Court has denied the request for a preliminary injunction.

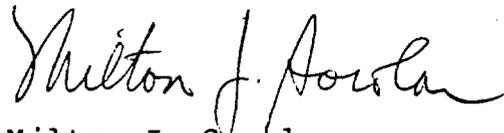
AGC00305

Mayfair has appealed to the United States Court of Appeals for the District of Columbia and states that this matter will not be heard or decided by the Court of Appeals until early 1980. Therefore, Mayfair requests that this Office review the merits of this protest notwithstanding the pending litigation.

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It is the policy of this Office not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our decision. 4 C.F.R. § 20.10 (1978). It appears that the issues which are before GAO are also being litigated. Mayfair has not been granted injunctive relief pending a decision by this Office and the court has not indicated any interest in a decision by this Office.

The protest is dismissed. Drew Chemical Corporation, B-193139, November 28, 1978, 78-2 CPD 404.



Milton J. Socolar
General Counsel

Conductor Debarment
Courts of appeal
Bidder responsibility

DECISION



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

Protest Against Specifications in RFP 10,137

FILE: B-193611

DATE: May 15, 1979

MATTER OF: California Computer Products, Inc.--
Reconsideration

DIGEST:

CNG 00343

Prior decision dismissing protest as untimely is affirmed where protester has not shown that prior decision was based on errors of fact or law.

California Computer Products, Inc. (Calcomp), requests reconsideration of our decision in the matter of California Computer Products, Inc., B-193611, March 6, 1979, 79-1 CPD 150. That decision concluded that our Office would not consider the merits of Calcomp's protest against certain specifications in request for proposals (RFP) No. CDPR-D-00014-N issued by the General Services Administration because the protest was not filed with our Office prior to the closing date for receipt of initial proposals, as required by the Bid Protest Procedures. 4 C.F.R. § 20.2(b)(1) (1978).

The essential facts follow. On December 4, 1978, we received Calcomp's protest against certain mandatory specifications as being unduly restrictive of competition. The closing date for receipt of initial proposals was December 1, 1978.

However, on January 18, 1979, GSA amended the RFP (1) to relax the specifications in a manner beneficial to Calcomp, and (2) to establish a new closing date of January 29, 1979. Prior to the revised closing date, GSA received a letter from Calcomp expressing the view that several areas of the RFP were still unreasonable and restrictive. Calcomp (1) specifically objected to the specifications resulting from the amendment to the RFP, (2) requested that they be changed, and (3) requested that the closing date be extended. GSA did not view Calcomp's letter as a protest and went ahead with the closing date as scheduled.

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On reconsideration, first Calcomp argues that since the RFP was amended and a new closing date was established, its protest, while filed after the initial closing date, was filed here prior to the amended closing date and should be considered timely filed.

The essence of Calcomp's reconsideration request is first that GSA's amendment of the RFP to establish a new closing date in effect revived Calcomp's untimely protest. We disagree. Procedurally, a protest against specifications must be filed prior to the initial closing date (4 C.F.R. § 20.2(b)(1) (1978)); if the RFP is subsequently amended to add, delete, or change certain specifications, a protest regarding the amendment must be filed prior to the amended closing date in order to be considered timely filed under our Bid Protest Procedures. Accordingly, as stated in the prior decision, since Calcomp's December 4, 1978, protest involved alleged "apparent" solicitation defects and it was not filed prior to the closing date for receipt of initial proposals, it will not be considered.

Secondly, Calcomp contends that its letter to GSA protesting the amended RFP should be considered timely because Calcomp delivered a copy of that letter to our Office. We do not consider a copy of a letter of protest addressed to the procuring agency to constitute a protest to our Office. See 4 C.F.R. § 20.1 (1978), which provides that protests to GAO must be addressed to the General Counsel and must request a ruling by the Comptroller General. Calcomp's letter to GSA with a copy to our Office did not comply with these requirements.

Further, the prior decision--in anticipation of Calcomp's current contention--stated that if we considered Calcomp's letter to GSA an agency protest, then the initial adverse agency action was GSA's proceeding with the closing, as scheduled, instead of taking the corrective action suggested by Calcomp. Jazco Corporation, B-192407, August 31, 1978, 78-2 CPD 162. The prior decision noted that to be considered timely, Calcomp would have had to protest here within 10 working days after the closing date;

since Calcomp did not do so, any protest at this time would be untimely. See General Leasing Corporation--Reconsideration, B-193527, March 9, 1979, 79-1 CPD 170.

In sum, Calcomp has provided no factual or legal grounds that were not previously considered and Calcomp has provided no basis upon which reversal or modification of the prior decision is deemed warranted. Accordingly, the prior decision is affirmed.



Deputy Comptroller General
of the United States