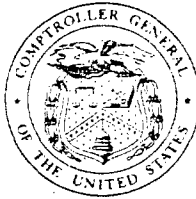


DECISION



12777^{PL-1} Mr. Vickers
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196705

DATE: February 7, 1980

MATTER OF: Wyatt Lumber Company *CNG-01882*

DIGEST:

Where protester permits 4 months to elapse between initial protest filing with contracting activity and time of protest filing with GAO, notwithstanding facts that activity never replied to original protest and contract had been awarded and was presumably being performed, protester did not diligently pursue protest. Therefore, protest to GAO is untimely and issue presented is not significant.

Wyatt Lumber Company (Wyatt) has protested the award of a contract to J&M Lumber, Inc. (J&M), under *D2G-03864* invitation for bids (IFB) No. DLA 720-79-B-0599 issued by the Defense Construction Supply Center, Columbus, *AGC00385* Ohio (DSCS).

The IFB was a total small business set-aside for various quantities and sizes of softwood lumber. Wyatt contends that J&M's original supplier was not a small business concern as required by the IFB and J&M was permitted to change its supplier after bid opening.

Bids were opened on June 12, 1979, with J&M as the low bidder. By telegram dated June 14, 1979, Wyatt protested to the contracting officer that a supplier of J&M was a large business. A copy of the telegram shows that it was received at DCSC on June 14, but the contracting officer states she never saw a copy of it and made award to J&M on June 18, 1979. J&M was advised of the proposed award by notice dated June 15, 1979. In a June 15, 1979, telegram, J&M changed its proposed supplier. The contract was completed on September 6, 1979.

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[Protest Against Small Business Set-Aside
Contract Award]

On October 15, 1979, Wyatt wrote the contracting officer to ascertain why its size protest was ignored. By letter of October 26, 1979, the contracting officer responded to Wyatt's October 15, 1979, correspondence. This letter was received by Wyatt's counsel on October 31, 1979, and Wyatt's protest was filed with our Office on November 7, 1979.

DCSC argues that Wyatt's protest is untimely under our Bid Protest Procedures (4 C.F.R. part 20 (1979)) because it was not filed within 10 working days of bid opening.

While we view the protest to our Office as untimely filed, we do not believe Wyatt had to file the protest within 10 working days of bid opening. Wyatt did all that was necessary to file a timely size protest with the contracting officer and was entitled to wait a reasonable amount of time for a response.

However, when Wyatt received a notice of the proposed award, dated June 15, 1979, it was incumbent upon Wyatt to take some action. However, Wyatt did nothing until 4 months later when it wrote to the contracting officer on October 15. We conclude that Wyatt did not diligently pursue its protest by allowing this amount of time to pass, especially when the contract had a 60-day delivery requirement.

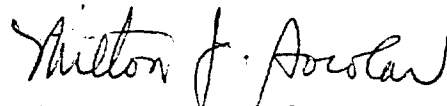
In view of this lack of diligent pursuit, we consider the protest untimely filed. Westwood Pharmaceuticals Inc., B-191443, March 31, 1978, 78-1 CPD 261.

Wyatt argues that even if the protest is untimely, it presents a significant issue under section 20.2(c) of our Bid Protest Procedures and should be considered under this exception to our timeliness rules. Wyatt contends that this problem will recur in the future at DCSC and that the problem bears directly on the effectiveness of the small business set-aside program.

The significant issue exception is limited to matters which are of widespread interest to the procurement community. We have held that where a protest

involves issues which have been considered in prior decisions, such issues are not "significant." Jones & Guerrero Co., Incorporated, B-192328, October 23, 1978, 78-2 CPD 296. The issue as to the propriety of substituting a small business supplier for a large business supplier after bid opening has been considered in past decisions of our Office. B-166724, August 11, 1969, and Prestex, Inc., B-195251.2, December 17, 1979, 79-2 CPD 411.

Accordingly, the protest is dismissed.

A handwritten signature in dark ink, appearing to read "Milton J. Socolar". The signature is fluid and cursive, with the first name "Milton" being more prominent.

Milton J. Socolar
General Counsel