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**DECISION**



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

FILE: B-197209

DATE: September 2, 1980

MATTER OF: McCaleb Associates, Inc.

**DIGEST:**

1. Where prior to closing date for receipt of proposals offeror orally protests alleged impropriety in Commerce Business Daily procurement announcement and solicitation, agency's receipt of proposals without taking corrective action constitutes initial adverse action. Therefore, subsequent protest to GAO more than 10 days after closing date is untimely, and does not warrant consideration under exceptions to timeliness rules.
2. Claim for proposal preparation costs will not be considered where to do so would circumvent Bid Protest Procedures by requiring consideration of untimely issue.

McCaleb Associates, Inc. (McCaleb), protests the award of a contract for structural engineering services to CH<sub>2</sub>M Hill, Inc. (Hill), a non-Indian firm, under request for proposals (RFP) No. NA-0600-9-8579, issued by the Department of the Interior, Bureau of Indian Affairs (BIA). McCaleb contends that the procurement was conducted and that the award was made in violation of the Buy Indian Act, 25 U.S.C. § 47 (1976), and BIA's implementing regulations and policy procedures. The protester also claims proposal preparation costs.

The protest and claim are dismissed.

Federal procurement of architectural and engineering (A/E) services is governed by the Brooks Bill, 40 U.S.C. §§ 541-544 (1976), which restricts the evaluation data that may be requested initially to the proposer's qualifications and requires that price negotiation be conducted with the highest-ranked firm. In accordance with

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the selection procedures for A/E services, an announcement of BIA's requirement was published in the Commerce Business Daily (CBD). Federal Procurement Regulations (FPR) §§ 1-1.1003-3(c) and 1-4.1001 (1964 ed. amend. 150).

Upon receipt of the CBD notice, the protester telephoned the procuring activity and asked why the project was not advertised with Indian preference or under the Buy Indian Act. See Bureau of Indian Affairs Procurement Regulations § 14H-3.215-70; 20 Bureau of Indian Affairs Manual 2, Release 5, July 20, 1979. McCaleb then met with the contracting officer's staff, offered evidence that it was a qualified Indian-owned business, specifically asked that it be considered under the act, and at the agency's request forwarded evidence of its eligibility for Indian preference to BIA on the same day. All of the above occurred prior to the closing date for receipt of proposals.

BIA received 41 proposals by the closing date. The protester's proposal was not among the eight selected for review by the full A/E Evaluation Board. Negotiations were conducted with Hill, the top-ranked firm. McCaleb was advised that award would be made to Hill and protested to the agency. After award to Hill, McCaleb received BIA's letter denying its protest and filed its protest appealing BIA's decision with our Office.

BIA argues that McCaleb's protest is untimely because it was not filed within 10 days after the protester's receipt of the CBD announcement or the meeting with BIA, by which time it should have known the grounds for the protest, and that the protest is based on alleged improprieties in the solicitation which were apparent but not protested before the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1) and (2) (1980).

We believe that McCaleb's pre-closing date contacts with the procuring activity were timely oral protests regarding the clear failure of the CBD notice and the RFP to prescribe a preference for Indian firms. See FPR § 1-2.407-8(a)(1) (1964 ed. amend. 139); 4 C.F.R. § 20.2(a) (1980). BIA's

receipt of proposals, without having amended the RFP in response to McCaleb's complaint, constituted the agency's initial action adverse to the protester's position that the services should be obtained by giving preference to Indian-owned A/E firms. Therefore, McCaleb's protest to our Office more than 6 weeks after the closing date is untimely filed. California Computer Products, Inc., B-193611, March 6, 1979, 79-1 CPD 150; 4 C.F.R. § 20.2(a) (1980).

The protester urges that the issues raised should be considered under section 20.2(c) of our Bid Protest Procedures which permits consideration of untimely protests where good cause is shown or where issues significant to procurement practices are raised. 4 C.F.R. § 20.2(c) (1980).

The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. Dupont Energy Management Corporation, B-195673, October 17, 1979, 79-2 CPD 264. Even if, as the protester alleges, the procuring activity's staff was willing to resolve the matter favorably to the protester, the receipt of proposals without amendment to the RFP could not extend the time period for McCaleb to protest here. Lamson Division--reconsideration, B-190752, January 31, 1978, 78-1 CPD 82. The significant issue exception is limited to issues of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. Where, as here, the merits of a protest concern issues which have been considered in prior decisions, they are not considered "significant," nor does the fact that none of the parties will allegedly be prejudiced constitute a basis for waiving our timeliness rules and considering the protest on the merits. Garrison Construction Company, Inc., B-196959, February 26, 1980, 80-1 CPD 159.

Consideration of McCaleb's claim for proposal preparation costs would involve consideration of the same issues we found untimely. In these circumstances, we will not consider McCaleb's claim for proposal preparation costs, because to do so would circumvent the

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timeliness requirements of our Bid Protest Procedures.  
Annapolis Tennis Limited Partnership, B-189571, June 5,  
1978, 78-1 CPD 412.

Accordingly, the protest and claim are dismissed.

*Harry R. Van Cleave*  
for Milton J. Socolar  
General Counsel