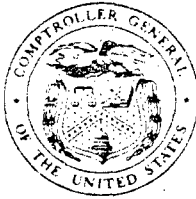


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DECISION



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

FILE: B-197209

DATE: October 6, 1980

MATTER OF: McCaleb Associates, Inc.--Reconsideration

DIGEST: *[Request for Reconsideration]*

Prior decision dismissing protest against procurement without preference for Indian-owned business in violation of Buy Indian Act, 25 U.S.C. § 47 (1976), as untimely is affirmed. Alleged absence of agency regulations implementing act does not constitute supervening circumstance which would constitute good cause and excuse protester's delay, following adverse agency action on timely protests to procuring agency, in filing subsequent protest with GAO.

McCaleb Associates, Inc., requests reconsideration of our decision in McCaleb Associates, Inc., B-197209, September 2, 1980, 80-2 CPD _____, dismissing as untimely its protest that the Department of the Interior, Bureau of Indian Affairs' solicitation and award of a contract for engineering services without preference for Indian-owned businesses was in violation of the Buy Indian Act, 25 U.S.C. § 47 (1976). We also declined to consider the firm's claim for proposal preparation costs which would have required consideration of the same issues we found untimely protested.

McCaleb concedes that the protest is untimely but contends that the Bureau of Indian Affairs has not adopted regulations implementing the act; the absence of regulation confused and complicated the firm's response to the procurement and was the real cause of the untimely filing of the protest. We do not, however, believe that the circumstances warrant invoking the good cause exception to our timeliness standards under which an otherwise untimely protest may be considered on the merits. 4 C.F.R. § 20.2(c) (1980).

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McCaleb received both the Commerce Business Daily notice and the solicitation which did not provide for preference to be given to Indian-owned firms. Despite the protester's pre-closing date contacts with the procuring agency which constituted timely oral protests to the agency against the unrestricted nature of the procurement, the Bureau of Indian Affairs did not amend the solicitation to include Indian preference before the closing date for receipt of proposals.

Since the alleged absence of regulation did not impede McCaleb's timely protests to the procuring agency, we fail to see how that absence constituted good cause, a supervening circumstance beyond the protester's control which caused or even contributed to the delay in filing the subsequent protest with our Office. See Dupont Energy Management Corporation, B-195673, October 17, 1979, 79-2 CPD 264.

For the foregoing reasons, the decision of September 2, 1980, is affirmed.

We share the protester's concern with regard to the lack of regulations implementing the Buy Indian Act. We have previously suggested that the Department of the Interior should by regulation define the preference that Indian enterprises will receive in sub-contracting under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450e(b)(2) (1976), in order that bidders may compete on an equal basis as required by law. Department of the Interior--request for advance decision, 58 Comp. Gen. 160 (1978), 78-2 CPD 432; see J & A, Inc., B-196326, September 22, 1980, 80-2 CPD _____. By separate letter to the Secretary of the Interior we are therefore recommending that regulations be issued to establish the circumstances and the manner in which the negotiating authority under the Buy Indian Act will be exercised and to clearly define the standards of eligibility for Indian preference.



For the Comptroller General
of the United States