

DECISION

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

29974

FILE: B-216596.3 **DATE:** December 11, 1984

MATTER OF: COMSEC Systems Corporation--
Reconsideration

DIGEST:

1. Where the only reasonable reading of a protest is as an untimely complaint concerning a solicitation's proposal preparation period, a prior decision dismissing the protest is affirmed when the protester merely argues that the protest should have been read otherwise.
2. An agency's failure to award a contract by its stated target date is purely a matter of procedure which alone does not invalidate the procurement or provide a basis of protest for a firm that did not submit its proposal on time.

COMSEC Systems Corporation requests reconsideration of our decision, COMSEC Systems Corporation, B-216596.2, Nov. 5, 1984, 84-2 CPD ¶ _____. We affirm our prior decision.

In its initial protest, COMSEC complained that an Army solicitation for facsimile transmission systems, request for proposals (RFP) No. DAAB07-84-R-K024, did not allow enough time for prospective offerors to prepare their proposals. COMSEC discounted any claim by the Army that the procurement was urgent by noting that the target date for award of a contract has passed without an award having been made. COMSEC urged us to recommend that the Army cancel the RFP and resolicit the requirement. We dismissed the protest as untimely because it involved an alleged solicitation impropriety and, therefore, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), should have been filed, but was not, prior to the closing date for the receipt of proposals.

In requesting reconsideration, COMSEC says that we did not consider all the facts it submitted originally and therefore did not address the actual basis of its protest.

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COMSEC does not specify the facts it says we did not consider, but says that its protest actually was based on the agency's failure to award a contract by the target date. Since the agency apparently considered making an award by the target date to be critical, COMSEC says that the failure to do so renders the procurement "null and void" and "re-opens and revitalizes the question of restriction of competition." COMSEC says its arguments in the initial protest concerning the proposal preparation period were provided only as background, not as the basis of its protest. In fact, says COMSEC, it actually did prepare a proposal within the time allowed, but failed to submit it on time only because of a traffic delay. COMSEC requests a conference to discuss these matters more thoroughly.

We reviewed again COMSEC's initial submission to this Office, and we are convinced that the only reasonable reading of that submission is as a protest concerning the allegedly inadequate proposal preparation period. For the reasons stated in our prior decision, the protest was untimely.

We recognize that the protester's initial submission referred to the fact that the agency had not awarded a contract by the target date and that our prior decision did not. The reason for this, however, is that the only possible significance of the failure to make an award by the target date is that it tends to rebut somewhat the argument that the proposal preparation period could not be extended because the agency considered making an award by the target date to be critical. Since the objection to the proposal preparation period was untimely, there was no reason to discuss a fact that arguably might indicate that the agency's refusal to extend the period was not justified. Moreover, an agency's failure to meet procurement milestones is purely a matter of procedure and alone does not invalidate the procurement or provide a basis of protest for a firm that did not submit its proposal on time.

Because COMSEC has not shown that our prior decision was legally erroneous or did not properly consider the facts presented, we affirm it. Maintenance Pace Setters, Inc.--Reconsideration, B-213595.2, June 18, 1984, 84-1 CPD ¶ 635. In addition, we generally will not hold a conference in response to a request for reconsideration,

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particularly where, as here, the matter can be decided without one. Treat Wood Products--Request for Reconsideration, B-214041.2, June 1, 1984, 84-1 CPD ¶ 590.

for *Milton J. Fowler*
Comptroller General
of the United States