

DECISION



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

FILE: B-219008.3 **DATE:** August 12, 1985
MATTER OF: Taurio Corporation--Reconsideration

DIGEST:

1. Prior decision is affirmed where protester requesting reconsideration has not shown that original decision dismissing its protest as untimely is incorrect.
2. Where protest was dismissed because a protester failed to file comments on agency report, protester, rather than another bidder under same procurement, is the proper interested party under our Bid Protest Regulations to object to dismissal of its protest.

Taurio Corporation (Taurio) requests reconsideration of our decision in Taurio Corporation, B-219008.2, July 23, 1985, 85-2 C.P.D. ¶ ____. In that decision, we dismissed as untimely, Taurio's protest against award of two contracts under request for proposals (RFP) No. N00102-84-R-0614 issued by the Department of the Navy (Navy).

We affirm our decision.

We dismissed Taurio's protest based on the following information. The Navy advised us, and Taurio did not dispute, that on May 21, 1985, Taurio had received a debriefing from the contracting officer and that at this debriefing Taurio received all of the evaluation and ranking information which formed the basis of its protest against the technical evaluation of its offer. Taurio conceded that based on the debriefing it believed the Navy's awards were "illogical and arbitrary," but decided that, because of the wide discretion given source selection decisions by GAO, it would not prevail if it protested the awards. Taurio contended that it was only after it received a copy of a protest filed on May 30, 1985, by Art Anderson Associates (Anderson) that it believed it could prove that the Navy's evaluation was unreasonable, and thus filed its protest on June 18, requesting the same relief as Anderson, an impartial reevaluation of offers. Anderson essentially

argued that the technical evaluation was biased against Anderson, and submitted documents that allegedly showed "manipulation in the technical evaluation process" which resulted in improper awards to firms other than the lowest priced offerors.

It was our view that, since Taurio knew the information which gave rise to its objections to the technical evaluation and ranking on May 21, Taurio's protest filed on June 18, more than 10 working days after the May 21 debriefing, was untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1985). We also found that Taurio's protest did not fall within the good cause exception or significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c) (1985). Furthermore, we noted that Taurio had filed as an interested party to the Anderson protest under our Bid Protest Regulations. As an interested party, Taurio was given an opportunity to comment on the agency report on that protest, and also might have benefited from any remedy recommended by our Office if Anderson prevailed on its protest. However, Anderson's protest was dismissed in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.3(e), because Anderson failed to file comments on the agency report within 7 days after receipt of the report.

Taurio argues that it filed a timely protest based on information it discovered in the Anderson protest. Taurio also points out that it communicated its intent to file comments on the Anderson protest as an interested party and timely filed its comments, and objects to dismissal of Anderson's protest. With regard to Anderson's protest, Taurio points out that dismissal, without deciding the protest on the existing record, where an interested party has filed timely its comments on the agency report, is inconsistent with the Congressional intent, in granting GAO statutory authority to handle bid protests, that GAO provide a strong enforcement mechanism to protect vendors wrongfully excluded from competition. Taurio believes that dismissal for failure of Anderson to file comments within the 7-day period was not required under these circumstances, and is an "unnecessarily harsh sanction." Furthermore, Taurio argues that decisions such as this one will result in the protesters' need to hire counsel to "avoid traps that lurk in [our] procedures," and that, in this regard, our decision is contrary to the declaration in the Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3554(a)(1)

(West Supp. 1985), that GAO shall provide an inexpensive and expeditious resolution of protests.

We affirm our decision that Taurio's protest is untimely, since Taurio has not shown any error in law or fact regarding that decision. 4 C.F.R. § 21.12(a) (1985).

We disagree with Taurio's suggestion that the information contained in the Anderson protest provided it with a new basis of protest. In our view, the documents submitted by Anderson provide further support for an allegation Taurio concedes it already had support for based on the debriefing, that the evaluation of its offer was "illogical and arbitrary." Taurio elected not to pursue this protest basis in a timely manner. We note that had Taurio pursued this matter, either through the bid protest forum or a Freedom of Information Act request, it might have obtained the same information that Anderson obtained. Taurio, by choice, essentially relied on another company's pursuit of its protest, and now because that case properly has been closed without a decision on the merits seeks to obtain a decision on its untimely protest.

Finally, Taurio's arguments challenging the dismissal of Anderson's protest are, in effect, made on behalf of Anderson, and Anderson, not Taurio, is the proper interested party under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1985), to request reconsideration of our dismissal of its protest. See Galaxy Custodial Services, Inc., et al., B-215738, et al., June 10, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 658.

for *Raymond Epps*
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