

# DECISION



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

**FILE:** B-222602.2 **DATE:** June 16, 1986  
**MATTER OF:** Vicinay International Chain Co., Inc.  
Request for Reconsideration  
**DIGEST:**

Dismissal of untimely protest, filed after publication of Commerce Business Daily notice of noncompetitive industrial mobilization procurement, is affirmed on reconsideration. Denial of agency-level protest, 1 month before CBD notice, constituted notice of "proposed award" such that protest should have been filed within 10 days of adverse agency action. Neither "good cause" nor "significant issue" exception to timeliness requirements applies.

Vicinay International Chain Co., Inc. (Vicinay), requests that we reconsider our dismissal of the firm's protest of the Naval Facilities Engineering Command's (Navy) proposed sole-source award of a mooring chain contract to Baldt, Inc. We dismissed the protest as untimely. Vicinay contends that it met the timeliness requirements of our regulations and the Competition in Contracting Act of 1984 (CICA), (31 U.S.C. § 3551, et seq. (Supp. II 1984)).

We affirm the dismissal.

Vicinay initially protested the noncompetitive nature of the mooring chain procurement to the Navy on April 10, 1986. The Navy denied Vicinay's protest in a letter dated April 18, 1986, stating that the procurement would be restricted for industrial mobilization purposes. Section 21.2(a)(3) of our Bid Protest Regulations, 4 C.F.R. part 21 (1986), requires that where a protest initially is filed with the contracting agency, any subsequent protest to our Office must be filed within 10 working days after the firm knows of initial adverse action at the contracting agency level. Here, Vicinay's 10 days began to run when it received the Navy letter of April 18, 1986. Since Vicinay did not protest to our Office until May 23, we dismissed its protest as untimely.

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Vicinay, in requesting reconsideration, argues that it was not legally able to protest the procurement until May 21, the date notice of the proposed contract action appeared in the Commerce Business Daily (CBD). According to Vicinay, our Office did not have statutory jurisdiction to hear the protest until the CBD notice of the solicitation was published, and GAO would have dismissed as premature any protest Vicinay filed before a solicitation was issued. In support of its contention, Vicinay cites such cases as Catalyst Financial Corp.; The Breitman Co., B-213684, Feb. 28, 1984, 84-1 C.P.D. ¶ 246, and The Raymond Corp., B-214327, Feb. 22, 1984, 84-1 C.P.D. ¶ 229.

CICA defines a protest as:

" . . . a written objection by an interested party to a solicitation by an executive agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract." 31 U.S.C. § 3551 (1), as added by section 2741 of the Competition in Contracting Act of 1984, Pub. L. No. 98-369, title VII, 98 Stat. 1175, 1199.

We view the Navy's April 18 letter denying Vicinay's protest of the Navy's proposed sole-source award to Baldt, Inc., as adequate notice to Vicinay of a "proposed award" to Baldt, Inc. Since we have jurisdiction under CICA to hear protests of proposed awards, Vicinay could and should have protested to our Office within 10 days of learning of the Navy's denial of its protest, in accordance with our timeliness regulations.

We note that the cases cited by Vicinay to support its contention that we would have dismissed as premature any protest filed before a solicitation was issued are inapposite. None concern a protest to our Office after a denial of an agency-level protest of a proposed sole-source award.

Vicinay argues that even if untimely, its protest should be considered under the timeliness exception in our regulations where good cause is shown or the protest raises an issue significant to the procurement community. See 4 C.F.R. § 21.2(c) (1986).

The good cause exception to the timeliness requirements is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from

filing a timely protest. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 C.P.D. ¶ 281. That is not the case here.

Our Office will review an untimely protest under the significant issue exception only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. ITT Telecom Products Corp., B-221325, B-221326, Mar. 21, 1986, 86-1 C.P.D. ¶ 283. Since we have considered the issue of restricting procurements for industrial mobilization purposes, we will not invoke the exception here. See National Presto Industries, Inc., B-195679, Dec. 19, 1979, 79-2 C.P.D. ¶ 418; Martin Electronics, Inc., B-219803, Nov. 1, 1985, 65 Comp. Gen. \_\_\_, 85-2 C.P.D. ¶ 504.

The dismissal is affirmed.

*for* *Seymour Efron*  
Harry R. Van Cleve  
General Counsel