



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McDonald Welding & Machine Co., Inc.--
Request for Reconsideration
File: B-224014.3
Date: October 23, 1986

DIGEST

Prior decision affirming the dismissal of a protest as untimely is affirmed where the argument raised by the protester in the request for reconsideration does not show that the prior decision was erroneous.

DECISION

McDonald Welding & Machine Co., Inc. (McDonald) requests reconsideration of our decision in the matter of McDonald Welding & Machine Co., Inc.--Request for Reconsideration, B-224014.2, Sept. 5, 1986, 86-2 C.P.D. ¶ ____.

We affirm our prior decision.

On August 26, 1986, McDonald filed with our Office a protest concerning request for proposals (RFP) No. N00140-86-R-0987, issued by the Department of the Navy, contending that an August 4 letter sent by the contracting officer called for the submission of revised proposals under terms which were "restrictive and noncompetitive." McDonald urged that our Office rule that the RFP be "further amend[ed] . . . to permit all qualified suppliers to bid . . . on an unrestricted and legally competitive basis."

We dismissed McDonald's protest because it was not filed before the closing date for receipt of revised proposals, as required by our Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1) (1986).

McDonald then requested that we reconsider our dismissal of its protest. In our September 5 decision, we affirmed our dismissal of the protest, pointing out that under 4 C.F.R. § 21.2(a)(1) alleged improprieties which become apparent prior to the closing date for receipt of proposals or which do not exist in the initial solicitation but are subsequently incorporated into the solicitation, must be

protested not later than the next closing date for receipt of proposals following the incorporation of the alleged impropriety. 4 C.F.R. § 21.2(a)(1). See Shaw Aero Development, Inc.--Request for Reconsideration, B-221980.2, May 28, 1986, 86-1 C.P.D. ¶ 495. We found that we had properly dismissed McDonald's protest as untimely since the protest against allegedly unduly restrictive award provisions was not so filed.

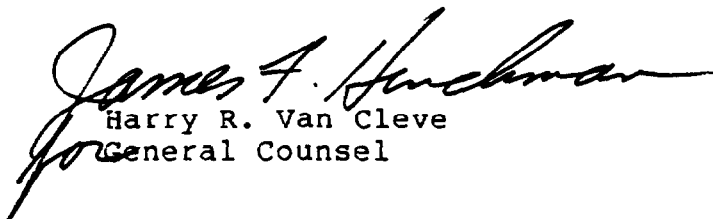
In this, its second request for reconsideration of our dismissal of its protest, McDonald argues that since its protest was based on an August 4 "cover letter" to amendments under the RFP, 4 C.F.R. § 21.2(a)(1) should not apply since the August 4 letter was not formally "incorporated into the solicitation."

In its initial protest, McDonald referred to the contracting officer's correspondence as a "cover letter," terminology which we repeated in our September 5 decision. More accurately stated, however, the contracting officer's August 4 letter was a request for submission of revised proposals under an acquisition structure which, the letter stated, was "hereby formally revised as established" in an exhibit attached to the letter. The contracting officer advised offerors that the exhibit "constitute[d] the altered foundation for proposal evaluation and award determination" and requested offerors "to submit a revised price proposal for the altered acquisition structure as detailed in [the exhibit]." McDonald's protest was not filed with our Office until after revised proposals were due.

Although not denominated an "amendment" to the solicitation, the contracting officer's letter advised all offerors that the Navy had established new criteria under which offers would be evaluated for award and requested revised price proposals to be submitted in response to these criteria. McDonald clearly recognized this in its initial protest in which it requested, by way of relief, that the solicitation be "further amended" to eliminate the revised terms contained in the contracting officer's letter. Where, as here, the agency's contracting officer advises all offerors by letter--however designated--that the terms under which proposals are to be evaluated under the solicitation have been changed, and requests the submission of revised price proposals on that basis, we think it is clearly incumbent upon an offeror under section 21.2 (a)(1) of our regulations to file, prior to the next closing date for receipt of

proposals, any protest against the revised terms on which the government is soliciting proposals.

The protester's argument is without merit and we again affirm our dismissal of its protest as untimely.


Harry R. Van Cleve
General Counsel