



The Comptroller General
of the United States

Washington, D.C. 20548

Delaney

Decision

Matter of: Penn-Tran Corporation--Reconsideration
File: B-227862.4
Date: July 17, 1987

DIGEST

1. Protest that agency should have referred question of protester's responsibility to the Small Business Administration for consideration under certificate of competency procedures is untimely when filed more than 2 months after protester was advised of ineligibility for award based on negative preaward survey.
2. Protest that RFP's delivery date was impossible for any firm except the previous supplier to meet is untimely when delivery date was apparent from RFP amendment but was not protested until after the amendment's closing date.
3. General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception to timeliness rules where the protest does not raise an issue of first impression that would have widespread significance to the procurement community.

DECISION

Penn-Tran Corporation (PT) requests that we reconsider our June 15, 1987, dismissal of its protest of award to Cletronics, Inc., under request for proposals (RFP) No. N00163-87-R-0283, issued by the Naval Avionics Center (Navy), Indianapolis, Indiana, for a yoke assembly. We affirm the dismissal.

PT indicated in its initial protest that the Navy advised it on April 13, 1987, that it was ineligible for award because of a negative preaward survey, and that best and final offers had been requested from other offerors on March 17. According to PT, the Navy then called on April 14, stating that it would consider an offer from PT under an amended RFP with a closing date of April 28. On April 20, PT received the RFP amendment, which contained a definite delivery date that PT felt was impossible for anyone except the previous supplier to meet. PT took exception to the delivery date in its offer, and was notified by the Navy on June 3 that its offer was not accepted because of the exception taken.

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PT protested to our Office on June 15, contending that the Navy should have referred the question of its responsibility to the Small Business Administration (SBA) for consideration under certificate of competency (COC) procedures after the Navy found it ineligible for award due to a negative pre-award survey. PT alleged that it could have met the delivery date under the RFP in effect at that time. PT also protested that the delivery date in the amended RFP was impossible for anyone except the previous supplier to meet.

We dismissed PT's first basis of protest as untimely because PT was advised by the Navy on April 13, that it was ineligible for award based on a negative preaward survey, but did not protest to our Office until June 15, the Navy's non-referral of the matter to SBA. Our Bid Protest Regulations require that such a protest be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). Since PT's protest was not filed with our Office until June 15, more than 2 months after it knew or should have known that the Navy was not referring the question of its responsibility to SBA, its protest on this basis was untimely.

We dismissed PT's second basis of protest as untimely because the delivery date was apparent from the solicitation amendment but was not protested until June 15, well after the April 28 closing date. Our Bid Protest Regulations require that such a protest based upon an alleged impropriety which does not exist in the initial solicitation, but which is incorporated into the solicitation, must be filed not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1); Avitech Inc., B-214749, Sept. 17, 1984, 84-2 CPD ¶ 297.

In its request for reconsideration, PT states that its protest is timely because it was filed within 10 days from its receipt of notice of award to Cletronics, Inc. However, as can be seen from our discussion above, the date of PT's receipt of the notice of award is not relevant to the timeliness of either of its bases of protest.

PT also asserts that we should reconsider its protest because of the contracting officer's alleged negligence in not referring the question of PT's responsibility to the SBA for consideration under COC procedures. To the extent PT believes we should consider its protest even though it is untimely, we will consider an otherwise untimely protest only when the protest raises an issue of first impression that would have widespread significance to the procurement community. 4 C.F.R. § 21.2(c); Alpha Parts & Supply, B-225401, Jan. 15, 1987, 87-1 CPD ¶ 62. The protest does

not meet this standard, and we therefore will not consider it, because we have previously considered the issue of an agency's failure to refer a nonresponsibility determination to SBA for consideration under COC procedures. See e.g., Small Business Administration--Request for Reconsideration, B-219654.3, Apr. 30, 1986, 86-1 CPD ¶ 420.

Our dismissal of the prior protest is affirmed.



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General Counsel