



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Troglodyte Society, Inc.--Request for
Reconsideration
File: B-227407.3
Date: July 29, 1987

DIGEST

Decision dismissing protest based on information released under the Freedom of Information Act as untimely is affirmed where protester delayed more than 3 months between its receipt of the information that provided its basis for protest and its filing of the protest.

DECISION

Troglodyte Society, Inc. requests reconsideration of our decision, Troglodyte Society, Inc., B-227407 et al., June 25, 1987, 87-1 CPD ¶ _____, dismissing its protest of the Army's awards under request for proposals (RFP) Nos. DAAK70-86-R-0060, DAAK70-86-R-0061, and DAAK70-86-R-0062 for mine detection research. We affirm our decision.

In our original decision, we dismissed as untimely Troglodyte's complaint that the portions of the awardees' proposals that it had seen did not contain adequate descriptions of the experience of the firms' personnel. The protester now argues that its lack of timeliness was in large part the product of the Army's delay in informing it of the awards and in responding to its Freedom of Information Act (FOIA) request for copies of the awardees' proposals.

The protester appears to have misunderstood our basis for finding this portion of its protest untimely. As we stated in our original decision, a protest based on FOIA information will be considered timely only if the protester has diligently pursued release of the information, and the protest is filed within 10 days of its receipt. We found Troglodyte's protest untimely because it was not clear that the protester had diligently pursued release of the awardees' proposals after the Army had informed it of their

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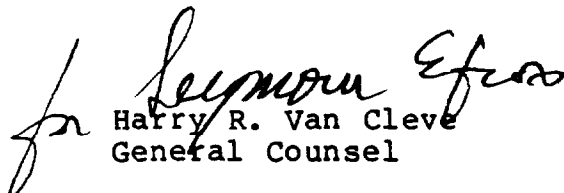
identities, and because Troglodyte delayed its protest more than 3 months after receiving the portions of the awardees' proposals.

Troglodyte also objects to our statement that the authority to determine what information must be disclosed under FOIA is vested in the contracting agency, and not in our Office, asserting that the awardees controlled release in this case. Whatever the protester means by that, our point was and is simply that under FOIA we do not have the authority to instruct an agency to release information requested from it under that Act.

Troglodyte also argues that since the Army intends to award a follow-on contract to the more successful of the two contractors that it has selected under each RFP, we should consider the timeliness of its protest as dating from the time of the follow-on award. We see no merit in this argument--whether Troglodyte's protest against a follow-on contract would be timely has no bearing on the issue of whether its protest against these awards is timely.

Finally, Troglodyte complains that it did not intend to challenge the solicitation requirement for mine detection experience as unduly restrictive. The protester indicates that its objection was instead that the proposals did not contain adequate descriptions of the mine detection experience of the offerors' personnel. If that was the case then that argument was properly dismissed as untimely for the reasons set forth above.

Our prior decision is affirmed.


Harry R. Van Cleve
General Counsel