



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Shamrock Foods Company/Sun West Services,  
Inc.--Reconsideration  
File: B-228892.2  
Date: November 30, 1987

### DIGEST

1. Request for reconsideration of a decision dismissing a protest as untimely is denied where protester was determined to be outside the competitive range and did not timely protest that decision.
2. An untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules since the issue raised is not of widespread interest to the procurement community.

### DECISION

Shamrock Foods Company/Sun West Services, Inc., requests that we reconsider our decision in Shamrock Foods Company/Sun West Services, Inc., B-228892, Oct. 13, 1987, 87-2 C.P.D. ¶ \_\_\_\_\_, in which we dismissed the firm's protest of the exclusion of its proposal from the competitive range and the award of a contract to Nobel/Sysco Food Services, Inc., under request for proposals (RFP) No. N00-87-24, issued by the Bureau of Indian Affairs, Department of the Interior, for food services to Navajo area schools in Arizona and New Mexico. We deny the request for reconsideration.

Shamrock had alleged that Interior's decision to exclude the company's proposal from the competitive range was not fair, reasonable or consistent with the evaluation criteria. Interior had found that Shamrock's proposal was deficient because it was based on performance by a joint venture that did not meet the conditions for contractor team arrangements set forth in the RFP, failed to specify a prime contractor, included unacceptable post-award conditions and did not exhibit acceptable technical capability. We dismissed the protest as untimely since it was filed more than 1 month after Interior's denial of Shamrock's agency-level protest. See 4 C.F.R. § 21.3(a)(2) (1987).

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In its request for reconsideration, Shamrock contends that its initial protest, filed within 10 days of contract award, was timely to the extent it alleged that the awardee was a nonresponsive and nonresponsible offeror because it also is a joint venture, and the basis of protest thus was contract award. See 4 C.F.R. § 21.2(a)(2). Shamrock further contends that because its protest concerned the issue of favoritism to the incumbent contractor, it ought to be considered under the exception to our timeliness rules for issues significant to the procurement community. See 4 C.F.R. § 21.2(c).

We would not consider the protest of the award to Nobel/Sysco in any event. Where an offeror has been determined to be outside the competitive range and has not raised a timely challenge to this determination, that offeror generally is not an interested party to challenge award of the contract. See 4 C.F.R. § 21.0(a); E.H. Pechan & Associates, Inc.--Reconsideration, B-225648.3, Apr. 15, 1987, 87-1 C.P.D. ¶ 412. We note here that Interior informs us that, unlike Shamrock's proposal, Nobel/Sysco's offer was not based on performance by a joint venture that failed to meet the conditions for contractor team arrangements set forth in the RFP.

In order to invoke the exception to our timeliness rules for significant issues, the subject matter of the protest must be of widespread interest or importance to the procurement community and one that has not been considered on the merits in previous decisions. WAECO Power, Inc., B-218036, Feb. 13, 1985, 85-1 C.P.D. ¶ 224. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being rendered meaningless. Shamrock's protest does not fall within this exception, since the issue of Shamrock's exclusion from the competitive range for the reasons given by Interior is not of widespread interest and, in any case, the record does not support the allegation that Interior unduly favored Nobel/Sysco and intentionally excluded Shamrock from the competitive range without a factual basis. World-Wide Security Service, Inc.--Reconsideration, B-225270.2, Mar. 17, 1987, 87-1 C.P.D. ¶ 294.

Since Shamrock has not shown that our decision was based on an error of law or information not previously considered, the request for reconsideration is denied. 4 C.F.R. § 21.12.

  
James F. Hinchman  
General Counsel