



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: R. T. Nelson Painting Services, Inc.--Request for
Reconsideration
File: B-227953.2
Date: February 26, 1988

DIGEST

Request for reconsideration of decision dismissing as untimely a protest challenging request for second best and final offers (BAFOs) because it was not filed by the closing date for receipt of second BAFOs is denied where protester fails to present evidence that original decision was based on error of fact or law.

DECISION

R. T. Nelson Painting Services, Inc., requests reconsideration of our dismissal of its protest in our decision R. T. Nelson Painting Services, Inc., B-227953, Oct. 16, 1987, 87-2 CPD ¶ 368. In that protest, Nelson objected to the amendment of Department of the Navy request for proposals (RFP) No. N00406-87-R-0573, after submission of best and final offers (BAFOs), and the subsequent reopening of the competition for a second round of BAFOs. We dismissed the protest as untimely because it was filed after the closing date for receipt of the second BAFOs. Nelson claims that our initial decision misconstrued its protest. We deny the request for reconsideration.

In its original protest, Nelson argued that the Navy's amendment of the solicitation after the submission of initial BAFOs was unnecessary, and therefore unreasonable. In addition, Nelson contended that the request for second BAFOs created an impermissible auction due to its belief that its position as low offeror had been improperly disclosed by the contracting officer.

We dismissed both allegations on the ground that an alleged improper solicitation amendment modifying the agency's requirements and establishing a new BAFO date constitutes an alleged solicitation impropriety that must be protested before the new closing date for receipt of BAFOs, in order

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to be timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987). Since Nelson did not protest the decision to reopen the competition until 7 days after the closing date, and did not challenge the contents of the amendment until approximately 6 weeks after the closing date, we found the protest untimely.

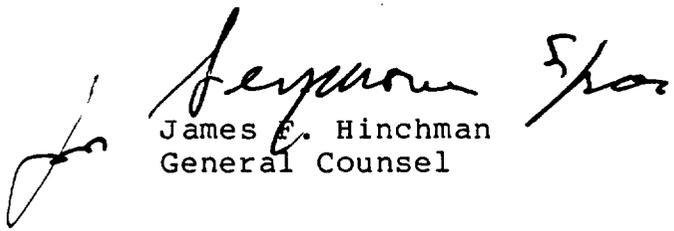
In its request for reconsideration, Nelson argues that the actions it was challenging--the alleged disclosure of Nelson's status as low offeror and modification of the RFP to require the contractor to furnish a tent enclosure for the workplace--are issues independent of the solicitation, and that we thus applied the wrong timeliness standard. Nelson claims the proper rule is the one under 4 C.F.R. § 21.2(a)(2) that applies to other than alleged solicitation improprieties, and which requires only that a protest be filed within 10 working days after the basis for protest is known or should have been known. Nelson further argues that the short notice of the second round of BAFOs (July 2, with a July 7 due date) afforded it an insufficient amount of time to protest.

Nelson's characterization of its protest notwithstanding, it is clear that the event that created the possible competitive prejudice to Nelson was not the alleged disclosure of Nelson's proposal information after first BAFOs, but the Navy's decision to request second BAFOs; absent the decision to reopen, the alleged disclosure of Nelson's proposal information would have been harmless for purposes of this procurement, since another offeror would not have the opportunity to take advantage of the information by revising its proposal. Thus, the essence of the protest was the propriety of the amendment requesting second BAFOs, and any protest against the term of this amendment had to be filed prior to the closing date for second BAFOs.

While a relatively short time was allowed for submission of second BAFOs, we believe this time was sufficient to permit Nelson to prepare and submit, sometime before the 2 p.m., July 7 deadline, at least a brief statement of its fairly uncomplicated protest grounds. We note that Nelson was able to prepare and submit a timely second BAFO. Thus, as we

held in our prior decision, because Nelson did not protest the amendment prior to July 7, its protest was untimely. See Mid-America Research, B-227871, July 10, 1987, 87-2 CPD ¶ 37.

The request for reconsideration is denied.



James F. Hinchman
General Counsel