



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E.S. International--Reconsideration

File: B-231588.2

Date: July 8, 1988

DIGEST

General Accounting Office will not consider the merits of an untimely protest by invoking the significant issue exception of the Bid Protest Regulations where the protest does not raise an issue of significance to the procurement community.

DECISION

E.S. International (ESI) requests that we reconsider our dismissal of its protest concerning a Department of the Navy International Armaments Cooperation/Acquisition Program Management Support contract as untimely.

We affirm the dismissal.

ESI protested the reversal of a Navy preliminary decision to offer the support services contract to the Small Business Administration (SBA) for award to ESI pursuant to section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. IV 1986). Section 8(a) authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Forway Industries, B-217046, Nov. 26, 1984, 84-2 CPD ¶ 573. The Navy has decided to conduct an unrestricted procurement for the services instead of using the section 8(a) program.

ESI alleges that the Navy allowed a large company to influence it into canceling the planned 8(a) set-aside procurement. On April 6, 1988, ESI submitted a protest to

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the Navy regarding this procurement, and received a letter from the Navy on May 13 denying the protest. ESI then filed a protest with our Office on May 31.

Under our Bid Protest Regulations, if a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. 4 C.F.R. § 21.2(a)(3) (1988). The term "filed" means receipt in our Office, not merely the mailing or other transmission of the protest. 4 C.F.R. § 21.0(g); see Urban Indian Council, Inc., B-225955.2, May 12, 1987, 87-1 CPD ¶ 500. We dismissed the protest because we did not receive it in the required timeframe.

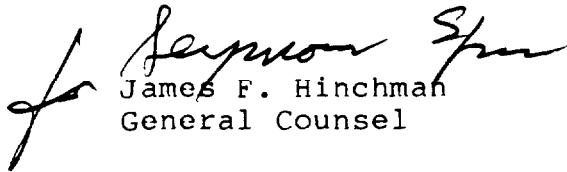
The protester requests that our Office consider its protest under the exception in our Regulations for significant issues, 4 C.F.R. § 21.2(b). Under that exception, our Office may consider any protest that is not timely filed if it raises an issue significant to the procurement system. See Filmore Construction Co., B-228656, Aug. 7, 1987, 87-2 CPD ¶ 141.

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. We construe this exception strictly and use it sparingly to prevent our timeliness rules from being rendered meaningless. Shamrock Foods Co./Sun West Services, Inc.--Reconsideration, B-228892.2, Nov. 30, 1987, 87-2 CPD ¶ 530. Here, while we recognize the importance of the issue raised to ESI, the protest does not fall within this exception, since it affects only this procurement.^{1/} The contracting agency has broad discretion to decide whether to award a contract through section 8(a) or through

^{1/} We also note that ESI, by its admission, no longer is eligible for an 8(a) award. ESI asks that either a sole-source contract be awarded it or, in the alternative, costs for proposal preparation and negotiations in contemplation of the section 8(a) award.

full and open competition, and the propriety of that decision in a particular procurement is not a significant issue within the meaning of our Bid Protest Regulations.

Our dismissal is affirmed.

James F. Hinchman
General Counsel