



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Industrial Skills Corp.

File: B-231669.5

Date: September 19, 1988

DIGEST

General Accounting Office (GAO) will not consider a new protest of solicitation improprieties, even though received prior to the closing date for submission of proposals, where an earlier, virtually identical protest concerning the same solicitation had been dismissed as untimely because the protester failed to file its original protest with GAO within 10 working days of formal notification of initial adverse agency action denying its agency-level protest.

DECISION

Consolidated Industrial Skills Corporation protests the bonding requirements in request for proposals (RFP) No. N62470-86-R-9303, issued by the Naval Facilities Engineering Command, Atlantic Division at Norfolk, Virginia.

We dismiss the protest.

In earlier decisions, Consolidated Industrial Skills Corp., B-231669.2, July 15, 1988, 88-2 CPD ¶ 58, aff'd on reconsideration, B-231669.3, Aug. 2, 1988, 88-2 CPD ¶ _____, we dismissed as untimely Consolidated's protest against these same bonding requirements, even though the closing date for receipt of proposals had been extended indefinitely, because Consolidated's protest was filed in our Office on July 7, more than 10 working days after Consolidated had received notice, on June 20, of the denial of its agency-level protest raising the identical issues. See 4 C.F.R. § 21.2(a)(3) (1988).

Following our dismissal of its protest, Consolidated filed a second protest on August 8 with the Navy again complaining of the bonding requirements. The Navy treated

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Consolidated's August 8 filing as a request for reconsideration of the Navy's June 20 denial of Consolidated's agency-level protest. The Navy summarily denied Consolidated's request for reconsideration since it found that Consolidated had submitted no new evidence or arguments which would provide a basis for reconsideration.

On September 6, Consolidated then filed the current protest in our Office. In its September 6 letter, which is virtually identical to its original protest filed in our Office on July 7, Consolidated states that "the focus of this third protest is once again the bonding requirements that are a part of the solicitation." (Emphasis supplied.) Consolidated does not request reconsideration of our earlier dismissal; it simply raises the identical issues that it raised in that earlier untimely protest.

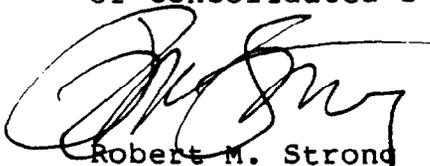
Consolidated apparently believes that since the RFP's closing date for receipt of proposals has been extended indefinitely that it can continue to raise the same arguments about what it perceives to be a solicitation impropriety concerning the bonding requirements by continually filing protests raising that issue. We have, however, considered and rejected other protesters' attempts to refile a dismissed protest under similar circumstances. See Pacific Lighting Energy Systems, 65 Comp. Gen. 13 (1985), 85-2 CPD ¶ 381; Adak Communications Systems, Inc.-- Reconsideration, B-228450.3, B-228450.4, Apr. 18, 1988, 88-1 CPD ¶ 373. In the cited cases, we noted that our Bid Protest Regulations do not contemplate the prebid opening (or preclosing date) resubmission and reconsideration of a protest identical to one already dismissed by our Office for the protester's failure to timely communicate with our Office concerning the contracting agency's protest report. We stated that accepting such a refiling would, for example, permit a protester that neglected its obligation to comment or express interest in the protest to forestall a contract award or otherwise delay a procurement simply by resubmitting its comments on the eve of bid opening as a new protest. This result would clearly be inconsistent with fair, orderly and expeditious contracting and would impair timely resolution of protests.

The same rationale applies to a protest dismissed for the protester's failure to file its protest with our Office within 10 working days from the date it knew of the basis of the protest, which here was Consolidated's receipt of the formal denial of its agency-level protest. Our Bid Protest Regulations specifically state, at 4 C.F.R. § 21.2(a)(3), that a protester who initially files its protest with the contracting agency raising an alleged impropriety in a

solicitation, must file its subsequent protest to our Office within 10 working days of formal notification (or actual or constructive knowledge of) initial adverse agency action. A protester who fails to meet that 10-day deadline will not be permitted to resubmit a previously untimely protest as a new protest or otherwise revive the complaint.

In the absence of an express request for reconsideration or any allegation whatsoever that our August 2 dismissal of its protest as untimely was based on an error of law or fact, Consolidated has given us no basis for regarding its most recent correspondence as a request that we reconsider that dismissal. We note, however, that even were we to consider Consolidated's new protest a request for reconsideration of our August 2 decision, that request itself is untimely since any such request for reconsideration must be filed in our Office not later than 10 working days after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.12(b). Even allowing a normal amount of time for a copy of our August 2 decision to reach Consolidated, its September 6 filing is clearly outside the 10-day deadline. In addition, Consolidated's second agency-level protest, filed on August 8, did not toll the 10-day deadline within which it must request reconsideration of our decision. See MMC/PHT--Request for Reconsideration, B-230715.2, Apr. 5, 1988, 88-1 CPD ¶ 341.

Under these circumstances, we will not consider the merits of Consolidated's September 6 protest, and it is dismissed.



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