



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Christoph's Research and Design Systems, Inc. -
Reconsideration

File: B-232966.2

Date: February 14, 1989

DIGEST

General Accounting Office (GAO) will not invoke the significant issue exception in Bid Protest Regulations in order to review an untimely protest, where the protest does not raise an issue of widespread interest to the procurement community and raises an issue of a type which GAO has previously considered on the merits.

DECISION

Christoph's Research and Design, Inc. (CRDS), requests us to reconsider our decision in Christoph's Research and Design System, Inc., B-232966, Dec. 12, 1988, 88-2 CPD ¶ 585. CRDS protested the award of contracts by the Space Division, Air Force Systems Command, under two procurement actions soliciting a low cost, high capacity and reliability Advanced Launch System (ALS). The Air Force initially issued a ALS Phase I Program Research and Development Announcement (PRDA) No. 0006 and subsequently issued a request for proposal No. FO4701-88-R-0006. We dismissed CRDS's protest as untimely. CRDS asks us to reconsider its protest, because CRDS believes its protest falls under an exception to the timeliness requirement under 4 C.F.R. § 21.2(b) (1988), as a protest "which raises issues significant to the procurement system." Because we disagree with CRDS, we deny the request for reconsideration.

The Air Force published the Phase I PRDA in the Commerce Business Daily (CBD) on April 30, 1987, for an ALS design study. CRDS submitted its proposal to the Air Force by June 15, 1987, the closing date for proposal submissions. After evaluating the competing proposals, the Air Force rejected CRDS' proposal, because it failed to meet the evaluation criteria included in the PRDA. The Air Force notified CRDS by letter that it had rejected CRDS's

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proposal on July 10, 1987. The Air Force published the list of contract awardees in the CBD on July 20, 1987. The seven Phase I contracts were completed by August 20, 1988.

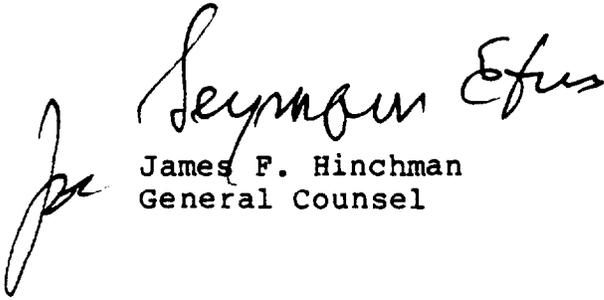
The Air Force announced the Phase II solicitation in the CBD on March 30, 1988. The notice indicated the solicitation would be issued by April 15, 1988, and close by May 31, 1988. The CBD announcement also noted that Phase II would be conducted "under full and open competition." CRDS did not submit a proposal for the Phase II solicitation.

CRDS filed its original protests for both solicitations on September 30, 1988. We rejected both protests because CRDS failed to file either in a timely fashion. Generally, our Bid Protest Regulations require protests to be filed within 10 working days after the basis for the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). Further, when alleged improprieties are apparent on the face of the solicitation itself, our Regulations require protests to be filed prior to the solicitation's closing date. 4 C.F.R. § 21.2(a)(1). With regard to the Phase I PRDA, we concluded that the CRDS September 30, 1988 protest of the rejection of its proposal was untimely because CRDS knew or should have known of the Air Force's rejection of its proposal by July 20, 1987, at the latest, and its protest was not filed until 14 months later. With regard to any impropriety in the Phase II RFP, we concluded that the CRDS protest was untimely because CRDS had failed to file it prior to the closing date for receipt of initial proposals.

CRDS requests us to reconsider our decision regarding the untimeliness of its protest under the significant issue exception to the timeliness requirements. Although its letter to us does not precisely explain the basis for the protester's request, we believe the protester's contention is that the Air Force failed to adequately consider its Phase I proposal which it believes offered the Air Force an innovative, cost effective, large capacity ALS. This proposal apparently exceeded the Air Force's stated needs.

We reject CRDS's argument. We strictly construe the "significant issue" exception in order to avoid rendering the timeliness requirement meaningless. Our prior decisions have limited the exception to those protests which raise issues of widespread interest to the procurement community or which are not of a type which we have previously considered on the merits in previous decisions. See Tioga Pipe Supply Co., Inc., B-230030, Feb. 24, 1988; 88-1 CPD ¶ 190. The issue which CRDS raises is not of widespread interest to the procurement community. Whether the Air

Force should have sought a larger capacity ALS than it solicited is a policy issue, not a legal one and appears to concern only the protester. Further, we have previously decided issues involving the propriety of agency needs on the merits. Ames-Avon Industries, B-227839.3, July 20, 1987; 87-2 CPD ¶ 71. Accordingly, we will not consider the issue under the significant issue exception to our timeliness rules. We therefore deny CRDS's request for reconsideration.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel