



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Northwest Piping, Inc.--Request for
Reconsideration

File: B-233796.4

Date: April 3, 1990

Paul S. Jacobsen, Esq., Briggs and Morgan, for the pro-
tester.

Warren H. Albrecht, Jr., Esq., Fleck, Mather, Strutz &
Mayer, Ltd., for R&D Construction, Inc., an interested
party.

John Formica, Esq., John W. Van Schaik, Esq., and John
Brosnan, Esq., Office of the General Counsel, GAO, par-
ticipated in the preparation of the decision.

DIGEST

Decision dismissing protest based on alleged inadequate bid
bond is affirmed as protester is not able to show that it
acted reasonably by waiting several months to file a Freedom
of Information Act request after it was apparent that agency
was not going to act on information which protester brought
to agency's attention.

DECISION

Northwest Piping, Inc., requests reconsideration of our
decision Northwest Piping, Inc., B-233796.2, Oct. 24, 1989,
89-2 CPD ¶ 373, dismissing its protest against the award of
a contract to R&D Construction, Inc., under invitation for
bids (IFB) No. RDSA00-0638, issued by the Bureau of Indian
Affairs (BIA), Department of the Interior, for road
construction on the Cheyenne River Indian reservation in
South Dakota.

We affirm the decision.

Northwest first protested the award to R&D on December 7,
1988. In relevant part, Northwest argued that R&D's bid
should have been rejected because the net worths of the
individual sureties on R&D's bid bond were inadequate. In

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Northwest Piping, Inc., B-233796, Mar. 30, 1989, 89-1 CPD ¶ 333, we denied the protest, concluding that the record failed to establish that the agency's acceptance of R&D's individual sureties was unreasonable or the result of bad faith.

Northwest filed a second protest on June 19, again arguing that the net worths of the individual sureties on R&D's bid bond were inadequate because the sureties did not own the real estate they claimed as their primary asset on their affidavits of individual surety. Northwest argued that the second protest was timely filed because it was based on information it was unaware of during the pendency of the first protest, and only became aware of it as a result of a May 25 Freedom of Information Act (FOIA) request. The FOIA response, which Northwest said it received on June 13, consisted primarily of a letter dated January 31, from the Bureau of Land Management (BLM), to BIA, which stated that the real estate claimed as the primary asset by the individual sureties on R&D's bid bond may be owned by the federal government.

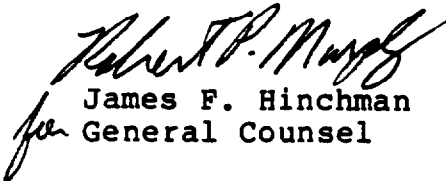
In Northwest Piping, Inc., B-233796.2, supra, we dismissed Northwest's second protest as untimely filed because Northwest had not diligently pursued the information necessary to file the protest. The record showed that in January 1989 Northwest had alleged to BIA that the land claimed by R&D's sureties was actually owned by the federal government, and that the protester had given BIA the name of an individual at BLM who would provide information to substantiate this allegation. Our decision also noted that in a February 2 submission filed during its first protest, Northwest essentially detailed the contents of the January 31 letter from the BLM. The record indicated that Northwest was aware of the existence and contents of the January 31 letter on which its protest was predicated sometime around that date. Since the agency took no further action regarding R&D's bond after our March 30 decision, we concluded that it was not reasonable for Northwest to wait until May 25 to file its FOIA request in order to attempt to discover the details behind the agency's failure to act on the information provided by that firm regarding R&D's sureties.

In its request for reconsideration, Northwest first argues that it did not actually receive the January 31 letter until June 13 in response to its May 25 FOIA request and that it did not know until May 25 that BIA had documentation concerning ownership of the land claimed by R&D's sureties. Our decision, however, was not based on Northwest's failure to diligently pursue a copy of the January 31 letter. As

stated in our decision, we dismissed the protest because Northwest did not diligently pursue the details behind the agency's failure to act on the information which it had received from Northwest regarding R&D's sureties. In this regard, Northwest acknowledges that as of late January 1989, it knew that the agency was aware of the possibility that R&D's sureties did not own the land claimed, since Northwest itself had supplied the agency with that information.

Northwest also argues that it diligently pursued the information it thought was necessary to file its protest. In this respect, Northwest has submitted an affidavit in which its attorney details his inquiries to the agency in April and May regarding the allegations Northwest made to the agency in January 1989 concerning R&D's sureties. In our view, however, it was unreasonable for Northwest to delay filing a FOIA request while it made these inquiries. We believe that it should have been apparent to Northwest, at least by the time we issued our March 30 decision, that the agency was not going to act on the information given to it by Northwest concerning the land claimed by R&D's sureties. At that time, 2 months had passed since Northwest provided the information to BIA and there was no indication that the agency was acting on Northwest's allegations. Further, it was not until nearly 4 months after Northwest supplied the agency with information concerning R&D's sureties and nearly 2 months after our decision was issued denying Northwest's protest challenging R&D's sureties that Northwest filed its FOIA request. As stated in our previous decision, we do not believe that Northwest diligently pursued the information it thought necessary to file its protest, namely, the details behind the agency's failure to act on Northwest's allegations. See J&J Maintenance, B-223355.2, August 24, 1987, 87-2 CPD ¶ 197.

The decision is affirmed.


for James F. Hinchman
General Counsel