



Comptroller General

of the United States

Washington, D.C. 20548

Decision

Matter of: AOI Systems, Inc.--Reconsideration

File: B-240768.2

Date: October 16, 1990

Richard J. Royston for the protester.

James M. Cunningham, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office's dismissal of protest without giving protester 10 working day period to comment on contracting agency memorandum requesting dismissal was proper because Bid Protest Regulations specifically provide for dismissal when propriety of dismissal becomes clear based upon information provided by the contracting agency.
2. Protest that contracting agency improperly disregarded technical merit in awarding to low offeror was untimely filed when raised more than 10 working days after date basis of protest was known.

DECISION

AOI Systems, Inc. requests that we reconsider our August 31, 1990, summary dismissal of the company's protest of an award of a contract to Orbot, Inc., an Israeli firm, under solicitation No. F09650-90-R-0094, issued by the Warner Robins Air Logistics Center for an optical inspection system.

We deny the request for reconsideration.

AOI complained that Orbot's low price should have been increased for price evaluation purposes by 50 percent under the "Balance of Payments" provision of the solicitation. AOI further complained that as a foreign concern Orbot enjoyed an unfair competitive advantage because Orbot is not subject to certain solicitation requirements imposed on United States concerns.

We summarily dismissed Orbot's protest without obtaining a fully-documented report from the Air Force. We found that the Air Force properly excluded Orbot's low price from the

50 percent factor as Orbot was exempt from the addition of that factor as an Israeli concern. We further found that the Air Force was not required to equalize whatever competitive advantage Orbot enjoyed as a foreign concern.

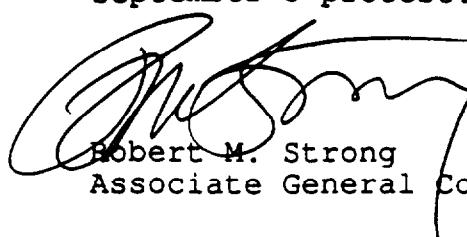
AOI now argues that our summary dismissal is inconsistent with our August 15 notice to AOI in which we acknowledged receipt of the company's protest and stated AOI would have 10 working days after the company's receipt of the Air Forces's bid protest report to file comments with our Office. AOI objects to the fact that we subsequently dismissed its protest on the basis of an Air Force memorandum without providing AOI a 10-day comment period.

Our summary dismissal of AOI's protest was based on our review of the Air Force memorandum which contained information demonstrating that AOI's bases of protest were not valid. Given the invalidity of AOI's protest, we then considered it appropriate to summarily dismiss the company's protest at that time without awaiting AOI's comments. Specifically, section 21.3(m) of our Bid Protest Regulations (4 C.F.R. Part 21 (1990)) provides that we may dismiss a protest at the time the propriety of a dismissal becomes clear based upon information provided by the contracting agency.

Consequently, our dismissal of AOI's protest was proper notwithstanding that AOI was not allowed 10 days to comment on the Air Force's memorandum. In any event, we have examined AOI's comments and we find that they essentially restate AOI's initial bases of protest. Consequently, those comments provide no grounds for us to reconsider our dismissal of the protest.

AOI's request for reconsideration, which we received on September 5, also raised a new ground of protest against the award. AOI now argues that the Air Force improperly disregarded technical merit in selecting Orbot for the award solely on the basis of Orbot's low offer. However, AOI's initial letter of protest, dated August 9, which we received on August 13, revealed AOI's knowledge that the "Orbot award was based solely on a lower price" and stated that AOI had submitted a technical offer which was "probably superior" compared with Orbot's technical offer. Therefore, AOI must be charged with notice of this new ground of protest no later than August 9. Given AOI's knowledge of this basis of protest as of August 9, we consider AOI's September 5 protest to be untimely. See 4 C.F.R. § 21.2(a) (2) (1990).

We deny the request for reconsideration, and dismiss the
September 5 protest.



Robert M. Strong
Associate General Counsel