



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Orkand Communications, Inc.--Second
Reconsideration

File: B-240443.3

Date: October 25, 1990

Peter S. Lake, Esq., Heiling, McKenry, Fraim and Lollar, 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

Request for reconsideration of prior decision is denied where protester does not establish any factual or legal errors in the prior decision.

DECISION

Orkand Communications, Inc. requests that we reconsider our decision in Orkand Communications, Inc.--Recon., B-240443.2, Aug. 20, 1990, 90-2 CPD ¶ 146. In that decision, we denied the company's request to reconsider our July 17 dismissal of the company's protest against award of a contract to Program Services, Inc./Military Newspapers of Virginia (PMV) under request for proposals (RFP) No. DABT57-90-C-0042, issued for the printing, composition, and distribution of the Fort Eustis, Virginia, civilian enterprise newspaper, "The Wheel."

We deny Orkand's second request for reconsideration.

In Orkand's initial protest filed with us on July 16, the company contended that the Army conducted this competition primarily to cause the incumbent contractor, PMV, to improve its performance, and did not mean to select, in good faith, a new contractor. Orkand also alleged that it suspected that disclosures were made to PMV which gave it a competitive advantage. Following the filing of the initial protest, Orkand informed our Office that the Army debriefed the company on June 28. We therefore considered Orkand to be on notice of the grounds of its initial protest as of June 28, at the latest, and we dismissed the protest as untimely filed under our Bid Protest Regulations since the protest was filed more than 10 working days after the date the basis of the protest

was known or should have been known. See 4 C.F.R. § 21.2(a)(3) (1990).

In its July 24 request for reconsideration, Orkand argued that we should not have considered its initial protest to have been untimely, primarily because the Army allegedly did not provide answers to Orkand's questions at the time of the debriefing but furnished them only in a July 2 letter to Orkand received sometime after that date. Orkand therefore argued that its July 16 protest was timely since it was filed within 10 working days of the date on which Orkand received the July 2 letter.

We concluded that the answers which the Army had provided to Orkand in its July 2 letter did not further the initial grounds of protest in any way, and we noted that Orkand had not advanced any new basis of protest based on those answers. Specifically, two of the answers had to do with the publication history of the newspaper; two others concerned the Army's reason for issuing the RFP instead of exercising an option under the prior contract and the Army's general approach in evaluating proposals; and the final two answers related to specific evaluation findings with respect to both the protester's and the awardee's proposals. Since the answers which Orkand received in the Army's July 2 letter related neither to its initial grounds of protest nor to any new ground of protest, we concluded that it was apparent that Orkand's receipt of the July 2 letter did not excuse the untimely filing of its initial protest.

In its September request for reconsideration, Orkand again argues that it should not be held to have had notice that "there may have been improprieties" in the PMV award until it received the Army's July 2 answers, which it now states it considers "evasive." In our view, the Army's answers were matter-of-fact and, objectively viewed, did not relate in any way to Orkand's initial bases of protest. In any event, if Orkand's present complaint that the Army's July 2 answers are "evasive" is meant to raise a new ground of protest, this new ground of protest is clearly untimely filed more than 10 working days after Orkand received the Army's July 2 answers. See 4 C.F.R. § 21.2(a)(3), above.

Since the July 2 answers do not relate to Orkand's grounds of protest, and in the absence of any other objective information as to when Orkand should be charged with notice of a basis of protest, we affirm our prior conclusion that Orkand should be charged with knowledge of its July 16 bases of protest no later than its June 28 debriefing date.

Next, Orkand argues that we should have waived our timeliness requirements and considered the protest because of the nature

of the allegations contained in the protest and because the July 2 answers which the company ultimately received from the Army were prompted by Orkand's "inquires designed to discover any improprieties."

To the extent that Orkand is suggesting that its bases of protest are "significant" so as to involve the significant issue exception to our timeliness requirements, we reject the argument. It is well-settled that the exception is limited to untimely protests where the contracting issue raised is one of widespread interest and is one which has not been previously decided. East, Inc., B-235687.2, Dec. 26, 1989, 89-2 CPD ¶ 591. Orkand's mere speculation that the competition was a sham and that PMV may have been given improper information do not raise significant issues--given their speculative nature--and since similar issues involving improper disclosures of information and the alleged manipulation of contract award processes to achieve a result pre-ordained by the contracting agency have previously been decided. Furthermore, as we noted in our August 20 decision, Orkand's filing of inquiries with the Army did not toll the filing deadline for Orkand's initial protest.

Finally, Orkand argues that we were estopped from summarily denying its July 24 request for reconsideration since we had previously informed Orkand, by notice of July 31, that we would request a report on the company's July 16 protest. However, under section 21.3(m) of our Regulations, we reserve the right to summarily dismiss a protest without requiring the submission of the contracting agency's protest report where a protest does not state a valid basis of protest or is untimely. By operation of section 21.12(c) of our Regulations, the right is extended to our consideration of requests for reconsideration. Consequently, even where we have requested a protest report from a contracting agency incident to our initial review of a request for reconsideration of a summarily dismissed protest, we are not precluded from later canceling the request upon a subsequent finding of an untimely or invalid protest. Based upon our further review of Orkand's July 24 request for reconsideration, we decided that the company's original protest still should be considered untimely filed, and we therefore properly canceled the request to the Army for a report on the company's protest.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law or that information not previously considered warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1990). Orkand's repetition of arguments made during our consideration of the

original protest and mere disagreement with our decision does not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

The request for reconsideration is denied.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the printed name.

Robert M. Strong
Associate General Counsel