



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

Decision

Matter of: Eyring Corporation--Reconsideration
File: B-245549.6
Date: June 4, 1992

Kenneth S. Kramer, Esq., and Deneen J. Melander, Esq.,
Fried, Frank, Harris, Shriver & Jacobson, for the protester.
Thomas J. Madden, Esq., John J. Pavlick, Jr., Esq., and
Fernand A. Lavalley, Esq., Venable, Baetjer, Howard &
Civiletti, for AAI Systems Management Inc., an interested
party.
Sylvia E. Anderson, Esq., Department of the Navy, for the
agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,
Esq., Office of the General Counsel, GAO, participated in
the preparation of the decision.

DIGEST

Request for reconsideration of protest dismissing issue as
untimely is denied where protester did not raise issue
within 10 working days after learning of basis for protest.

DECISION

Eyring Corporation requests reconsideration of our deci-
sion, Eyring Corp., B-245549.2, Jan. 24, 1992,¹ in which we
denied in part and dismissed in part its protest of the
award of a contract to AAI Systems Management Inc. under
request for proposals No. N61339-90-R-0004, issued by the
Naval Training Systems Center for visual upgrades to Navy
helicopter weapon system trainers. Specifically, Eyring
alleges that we incorrectly dismissed as untimely its alle-
gation that the agency had unreasonably failed to evaluate
the impact that substitution of one type of screen for

¹Because this decision incorporated protected information,
it was issued subject to the terms of a General Accounting
Office protective order and was released only to the parties
admitted to the protective order. We subsequently issued a
redacted version of the decision. Eyring Corp., B-245549.7,
Mar. 31, 1992, 92-1 CPD ¶ 320.

another type² in the trainers' display systems would have on solicitation requirements relating to luminance variation, viewing volume, and image perspective and geometric accuracy.

We deny the request for reconsideration.

In commenting on the agency reports,³ the first of which revealed that AAI had revised its proposal during discussions to substitute a different type of screen for the originally proposed type, Eyring argued that although the two types of screens are very different, AAI had made no attempt to determine which solicitation requirements might be adversely affected by the change in screen or to revise analyses based on the use of the originally proposed type of screen. The protester further argued that the Navy had simply accepted the substitution without any technical analysis or other evaluation.

We dismissed the latter argument as untimely. At the time we originally dismissed the issue, we understood that Eyring had based its allegation on a memorandum which the agency furnished to the protester as part of its October 17 report, in which the agency explained its basis for concluding that a display system incorporating the second type of screen would meet the solicitation's minimum luminance and contrast ratio values, but failed to discuss how such a system would meet the other requirements. In its request for reconsideration, Eyring argues that this memorandum did not provide the basis for its argument that the agency had accepted the screen substitution without any analysis of its impact on the other requirements; rather, the protester argues, it became aware of this ground of protest only after it received the agency's November 14 report, in which the agency noted--as part of its response to Eyring's allegation that AAI had not properly manufactured, applied, and

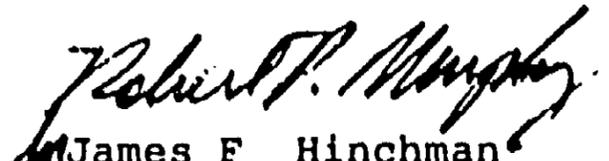
²In responding to our request that it identify those portions of B-245549.2 that contained protected information, AAI asked that we not identify the types of screens that it had proposed since it viewed this information as proprietary.

³Eyring filed five protests objecting to the award to AAI. The Navy responded to the allegations raised in the first two protests in an administrative report filed on October 17, 1991 and to the allegations raised in the second two in a report filed on November 14. (The fifth protest was dismissed as untimely.) At the suggestion of AAI and the agency and with Eyring's concurrence, we instructed the parties to file only one set of comments responding to both reports.

configured its display system and therefore could not comply with the solicitation's requirements concerning luminance variation, viewing volume, and image perspective and geometric accuracy--that AAI had promised to comply with these requirements in its proposal.

Even discounting the information furnished in the October 17 agency report, we disagree with the protester's assertion that it did not become aware of this basis of protest until it received the November 14 agency report. In response to the protester's supplemental document request dated October 21, 1991, the Navy, by letter dated October 28, received by the protester on October 29, disclosed all documents related to the Navy's evaluation of AAI's visual system, including its screen. The protester does not explain why the release of the evaluation materials to it on October 29 was insufficient to put it on notice of any objection it had to the nature or extent of the Navy's evaluation. Since the protester had the full evaluation record available to it as of October 29, to be timely, any allegations concerning the Navy's evaluation of AAI's proposal would have had to be raised within 10 working days after October 29, i.e., by November 13. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1992). Since Eyring did not raise these arguments until it filed its comments on November 27, they are untimely.⁴

The request for reconsideration is denied.


James F Hinchman
General Counsel

⁴In any event, in our second decision (B-245549.4), we responded to the protester's argument that the agency could not reasonably have determined that AAI's proposed display incorporating the second type of screen would comply with these solicitation requirements. We concluded that it was not unreasonable for the agency to have determined, based on the information in AAI's proposal and its experience with other similar screens, that there was a reasonable likelihood that the proposed display system would comply with the listed requirements.