



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Baton Rouge Aircraft, Inc.--Reconsideration

**File:** B-248056.3

**Date:** August 17, 1992

John Mark Tarver, Esq., Jones & Tarver, for the protester. Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Prior decision dismissing protest is affirmed where protest was untimely filed and no basis exists for considering protest under good cause or significant issue exceptions.

### DECISION

Baton Rouge Aircraft, Inc. requests reconsideration of our decision of April 30, 1992, dismissing as untimely its protest of the termination for convenience by the Defense Logistics Agency (DLA) of a contract awarded to Baton Rouge under request for proposals (RFP) No. DLA600-91-R-0013.

We affirm our dismissal of the protest.

On January 28, 1992, DLA awarded an into-plane fuel supply contract to Baton Rouge. On March 11, the contracting officer notified Baton Rouge that due to an error made by the agency in distributing the solicitation, negotiations would be reopened, and that if Baton Rouge were not the low offeror after the second round of best and final offers (BAFO), its contract would be terminated for the convenience of the government. By letter dated March 18, Baton Rouge complained to the agency that since the amount of its original award was a matter of public record, its competitors would find it easy to underbid it upon resolicitation; Baton Rouge therefore requested that the agency furnish it with a written statement of the reasons for termination of the contract and a citation to the contractual clause providing authority for such a termination. By letter dated March 24, DLA responded to Baton Rouge's inquiry, explaining that because it had misaddressed the solicitation package of the incumbent contractor, Louisiana Aircraft Inc., thereby precluding that offeror from submitting a timely offer, it had decided to accept a late offer from Louisiana Aircraft and to reopen negotiations with and request another round of

BAFOs from all offerors. The agency also cited the contractual clause which provided it with the authority to terminate for the convenience of the government. On March 30, DLA notified Baton Rouge that it was terminating its contract for convenience and awarding a contract to Louisiana Aircraft. By letter dated April 16, Baton Rouge filed an agency-level protest objecting to the termination of its contract. DLA denied the protest on April 23 and Baton Rouge filed a protest with our Office on April 28.

We dismissed Baton Rouge's protest as untimely. In our decision, we explained that our Bid Protest Regulations require that protests such as Baton Rouge's be filed either with the contracting agency or our Office not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1992). We noted that the agency had informed Baton Rouge on March 11 that the initial award to it had been improper and that it intended to reopen negotiations and to terminate Baton Rouge's contract if it were not the low offeror after the second round of BAFOs; thus, to be timely, Baton Rouge's protest would have had to be filed within 10 working days after March 11. Instead, the protester waited until April 16 to file an agency-level protest.

In its request for reconsideration, Baton Rouge contends that its letter to the agency dated March 18--in which it expressed concerns that since its bid price had been publicly disclosed, its competitors would attempt to underbid it on resolicitation--was a letter of protest, which was timely. As we noted in a footnote in our prior decision, even if Baton Rouge's letter of March 18 were intended as an agency-level protest of DLA's notice of March 11 that it intended to reopen negotiations, Baton Rouge's subsequent protest to our Office, filed on April 28, was untimely since it was not filed within 10 days of DLA's March 24 letter confirming DLA's intention to proceed with its previously announced plans. See 4 C.F.R. § 21.2(a)(3).

Baton Rouge further argues that even if its protest is untimely, our Office should consider it under the significant issue or good cause exceptions to our timeliness rules. 4 C.F.R. § 21.2(c). We see no basis to invoke either exception. The good cause exception is limited to circumstances where some compelling reason beyond the control of the protester prevents the protester from submitting a timely protest. Commercial Energies, Inc., B-242261.2, Mar. 21, 1991, 91-1 CPD ¶ 312. Here, Baton Rouge contends that it was misled into not filing a timely protest because a contracting agency official advised Baton Rouge's attorney on March 19 that no grievance procedures were available with respect to the agency's planned actions. Baton Rouge's

alleged reliance on erroneous advice given to its attorney does not excuse its untimely filing. pH-logistics, Inc.--Recon., B-244162.2, June 27, 1991, 91-1 CPD ¶ 611.

The significant issue exception to our timeliness rules is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision. DynCorp, 70 Comp. Gen. 38 (1990), 90-2 CPD ¶ 310. Baton Rouge's protest of the termination of its contract does not meet this standard. While we recognize the importance of the matter to the protester, its complaint, particular to this procurement, does not present an issue not previously considered or of widespread interest to the procurement community.

The prior dismissal is affirmed.

Robert M. Strong  
Associate General Counsel