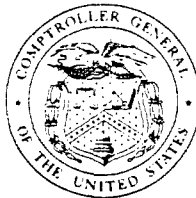


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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES WASHINGTON, D. C. 20548

9791

FILE: B-193904

Addressed

DATE: April 12, 1979

DLG 00874

MATTER OF: ~~Tate Engineering, Inc -- Reconsideration~~

[Protest Alleging Impropriety in Solicitation Filed After Date Set For Bid Opening]

DIGEST:

1. To insure fair and prompt resolution of protests, timeliness requirements are strictly construed. Thus, upon reconsideration, GAO affirms prior decision that protest alleging impropriety in solicitation which was filed after date set for bid opening and denial of timely protest to agency is untimely, under Bid Protest Procedures and not for consideration on merits.
2. Lack of actual knowledge of Bid Protest Procedures affords no ground for consideration of untimely protest since publication in Federal Register constitutes constructive notice of such procedures.

Tate Engineering, Inc. (Tate), requests reconsideration of our decision in the matter of Tate Engineering, Inc., B-193904, February 12, 1979, 79-1 CPD 98. The pertinent facts in that case follow.

DLG 00873

The Department of the Army (Army) issued a solicitation for the procurement of eight Peabody/Piatt oil burners. Industrial Combustion, Inc. (Industrial Combustion), a supplier of oil burners, protested to the procuring activity. The procuring activity denied the protest. Industrial Combustion did not file a protest with our Office after the denial. Instead, Industrial Combustion notified Tate, a distributor of Industrial Combustion's products, that the protest had been denied and the matter should be pursued further. Tate subsequently filed a protest with our Office after bid opening, alleging that the specified brand-name procurement was unduly restrictive. We held that since Tate alleged an impropriety in the solicitation and the protest was not filed with our Office until after bid opening, even though denial of the pre-bid-opening protest to the agency had been received by December 20 (bid opening January 9), the protest was untimely under 4 C.F.R. § 20.2(b)(1) (1978) of our Bid Protest Procedures and not for consideration on the merits.

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Tate now urges reconsideration of our decision on the following grounds:

1. GAO disregarded the fact that a protest was filed with the Army before bid opening.
2. The impropriety is evident on the face of the solicitation, that is, the procuring activity used an unduly restrictive brand-name specification.
3. Our decision that the protest was untimely is an excuse to disregard a valid protest before comments had been received from the procuring activity.
4. GAO found the protest untimely and not for consideration on the basis of Bid Protest Procedures of which the protester was not aware.


In our decision, we did not overlook the fact that a timely protest had been filed by Industrial Combustion with the Army. We simply took note that the protest was denied, and Tate's subsequent protest to our Office was not timely filed. Tate's protest was untimely on its face. Therefore, we did not see the need for obtaining comments from the Army before issuing our decision.

Our timeliness requirements are not a means of disregarding the merits of a valid protest or improper procurement practices, as Tate suggests. In this regard, we have stated that protests are serious matters, which warrant the immediate and timely attention of the protester, interested parties, the procuring activity and our Office. At stake are not only the rights and interests of the protester, but those of the procuring activity and other interested parties. Effective and equitable procedural standards are necessary so that the parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. The timeliness rules are intended to provide for expeditious consideration of objections to procurement actions without unduly burdening and delaying the procurement process and, at the same time, to permit us to decide the matter while it is practicable to take effective action with respect to the procurement where the circumstances warrant.

Our Bid Protest Procedures establish a process to insure fair and prompt resolution of protests. Therefore, the timeliness requirements for the filing of protests and requests for reconsideration must be and are strictly construed by our Office. Department of Commerce; International Computaprint Corporation, B-190203, August 2, 1978, 78-2 CPD 84.

The fact that Tate was not aware of pertinent portions of our Bid Protest Procedures affords no ground for considering the protest on the merits. We have held that since our Bid Protest Procedures have been published in the Federal Register, such publication constitutes constructive notice of the procedures. Karl Doll GmbH, B-187109, August 30, 1976, 76-2 CPD 205.

X Since Tate has failed to show any error of fact or law in our decision of February 12, 1978, dismissing it protest, that decision is affirmed for the reasons stated.


Deputy Comptroller General
of the United States