

DECISION



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

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Request for Reconsideration of Protest Dismissal

FILE: B-199445.3

DATE: October 14, 1980

MATTER OF: Bird-Johnson Company--Request for Reconsideration

DLG04942

DIGEST:

Decision dismissing protest as untimely under GAO's Bid Protest Procedures is affirmed where request for reconsideration provides no evidence that protest was timely filed, or that exception to timeliness rules should be invoked.

Bird-Johnson Company requests that we reconsider our decision in Bird-Johnson Company, B-199445, July 18, 1980, 80-2 CPD 49, in which we dismissed as untimely the firm's protest that the propeller specifications in a solicitation for nine Coast Guard cutters unduly prevented the firm from participating in the project as a subcontractor.

Bird-Johnson originally had protested the matter to the Coast Guard by letter of May 14, 1980, but proposals under the prime contract were received on June 3 without change in the specifications despite the protest. The basis for our dismissal of the matter was that the June 3 receipt of proposals constituted "initial adverse agency action" under section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), with respect to Bird-Johnson's protest to the Coast Guard, and since the protest was not filed in our Office within 10 working days thereafter, it was untimely under that provision. We also noted that the protest to our Office was filed within 10 working days after Bird-Johnson's receipt of a June 19 letter specifically denying the protest to that agency, but we stated that such fact does not alter the protester's responsibility to conform to the filing requirement of section 20.2(a).

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Bird-Johnson requests reconsideration essentially on four bases. First, the firm argues that since it was only a potential subcontractor, it was not aware of the June 3 receipt of prime contract proposals, but rather "had to rely on the Coast Guard to inform it about matters that were of interest" to the firm.

Second, Bird-Johnson states that because the solicitation was a negotiated one and the specifications therefore could be changed after initial proposal receipt, the June 3 receipt of proposals without the requested changes was not necessarily "adverse" to Bird-Johnson. In this respect, the firm points out that Bird-Johnson as well as other companies whose propellers do not meet the specifications as issued nonetheless have submitted proposals to offerors for the prime contract.

Third, Bird-Johnson argues that since section 20.2(a) of our Bid Protest Procedures encourages firms to direct complaints initially to the contracting agency, the complainant should be entitled to wait for a formal reply before protesting to our Office; Bird-Johnson suggests that if we find the firm's protest untimely, offerors will be constrained to file protests with the General Accounting Office prior to actually knowing the contracting agency's position.

Fourth, Bird-Johnson suggests that even if the protest is untimely the merits should be considered under the exception to our timeliness rules at section 20.2(c) of our Bid Protest Procedures for "issues significant to procurement practices or procedures." The reasons proposed are that the solicitation allegedly "contains unduly restrictive specifications which greatly inhibit the competitive bid process," and that less restrictive specifications would save the Government considerable money.

With respect to Bird-Johnson's alleged lack of knowledge that initial proposals under the prime contract were due on June 3, we do not agree that the contracting agency has any burden to keep potential subcontractors apprised of developments under the procurement of the prime contract. In our view, that type of information should be secured or expected from the offeror under the prime contract solicitation to whom the subcontract proposal is

directed. In this regard, where, as here, the subcontractor's protest is of the type that ordinarily we would consider on the merits since it involves an allegedly restrictive specification imposed by the Government, see Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166; Industrial Boiler Co., B-187750, February 25, 1977, 77-1 CPD 142, the protesting subcontractor is responsible for complying with our timeliness rules to the same extent as is the prospective prime contractor. See Truland Corporation; Compuguard Corporation, B-189505, September 26, 1977, 77-2 CPD 226.


We also find no merit in Bird-Johnson's position that since the prime contract procurement is a negotiated one the propeller specifications could be changed during the course of negotiations under the prime contract procurement, and thus the June 3 receipt of proposals was not necessarily adverse to Bird-Johnson. The time limits set out in our Bid Protest Procedures and their implementation in our bid protest decisions reflect our attempt to balance what we recognize are often conflicting considerations: resolving bid protests in a manner consistent with the orderly and expeditious process of Government procurement, and affording protesters and interested parties a fair opportunity to present their cases. Leasco Information Products, Inc., et al., 53 Comp. Gen. 932, 948 (1974), 74-1 CPD 314. To that end, we require that allegations of procurement irregularities be raised when corrective action, if necessary, is most practicable and thus least burdensome on the conduct of the procurement. The speculation inherent in Bird-Johnson's position, i.e., that the contracting agency might change the specifications during the negotiation process, and thus that a firm objecting to a specification may delay filing a protest essentially until just before the contract is awarded, is inconsistent with those considerations.

Further, we cannot agree that the effect of our July 18 decision is to discourage prospective contractors from seeking initial resolution of their problems with the contracting agency. To the contrary, we believe that it simply reflects our consistent position that while firms should do so, it is incumbent on them to remain diligent in their pursuit of the matter so as not to delay the

procurement process any more than absolutely necessary. Thus, our Bid Protest Procedures clearly advise protesters that after a protest has been filed with a contracting agency, any protest to our Office must be filed within 10 working days of "formal notification of or actual or constructive knowledge of initial adverse agency action." (Emphasis added.)

Finally, to maintain the integrity of our timeliness rules, the significant issue exception at section 20.2(c) of our Bid Protest Procedures is exercised sparingly, and thus it essentially contemplates only an issue which involves a procurement principle of widespread interest or which affects a broad class of procurements. Arlandria Construction Co., Inc., B-195044, B-195510, April 21, 1980, 80-1 CPD 276. The exception does not depend upon the amount of money involved. 52 Comp. Gen. 20, 23 (1973). We do not consider the issue of whether the particular restriction imposed here was unwarranted to be significant under section 20.2(c).

Our decision of July 18, 1980 is affirmed.


for the Comptroller General
of the United States