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DECISION



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

FILE: B-208002.3

DATE: December 7, 1982

MATTER OF: Small Business Administration--
Aunyx Manufacturing Corporation--
Reconsideration

DIGEST:

1. Small Business Administration (SBA) is not an eligible party to request reconsideration of GAO decisions where it did not participate in the initial protest.
2. Statutory provision that authorizes SBA's Chief Counsel for Advocacy to represent the interests of small businesses does not require GAO to consider that official's request that GAO reconsider its prior decision when under GAO Bid Protest Procedures SBA is not eligible to make such request.
3. Protest of a contracting agency's rejection of an offer as "late" does not present a "significant issue" warranting an exception to the timeliness rules in GAO's Bid Protest Procedures; since the protest does not raise an issue of widespread importance to the procurement community or involve a matter not considered on the merits in previous decisions.

The Small Business Administration (SBA) requests that we reconsider our decisions in Aunyx Manufacturing Corporation, B-208002, July 7, 1982, 82-2 CPD 30, (where we dismissed as untimely Aunyx's protest of the rejection of its offer by the General Services Administration (GSA)); and Aunyx Manufacturing Corporation--Reconsideration, B-208002.2, August 17, 1982, 82-2 CPD 138, (where we denied Aunyx's request for reconsideration because we found that Aunyx had failed to present facts or legal arguments showing our previous decision to have been erroneously decided). For the reasons that follow, the request is denied.

Aunyx's offer was received by GSA after the closing date set for receipt of offers. GSA rejected the offer as late and refused to consider it under the solicitation provision allowing consideration of late offers because Aunyx could not show that the offer was sent by registered or certified mail not later than 5 days prior to the date set for receipt of offers. Aunyx alleged that through a mistake made by the Postal Service its employee was given certificates of mailing rather than the receipts for certified mail that he had requested. GSA, however, held that these certificates did not satisfy the requirements of the late bid clause which would allow it to consider Aunyx's offer.

We dismissed Aunyx's protest of this action because the protest was not filed within 10 days after Aunyx learned of the basis for its protest as required by our Bid Protest Procedures.

In its request for reconsideration Aunyx essentially reiterated the arguments it made in its initial protest. In addition, it indicated, without elaboration, that it had reason to believe that an error had been made in the bid opening room with respect to its bid. Aunyx also argued that its protest should have been considered timely because the letter from GSA notifying Aunyx that its offer had been rejected was sent to its Government Sales Coordinator who was on military leave at the time the letter was received.

We denied Aunyx's request because we believed that Aunyx had not presented evidence to show that our previous decision was erroneous. The fact that GSA's letter to Aunyx was left unopened until the coordinator's return was not relevant to the question of the timeliness of Aunyx's protest because the decision not to open the letter was a matter of business judgment which did not relieve Aunyx of its obligation to file its protest in a timely manner.

In its request that we reconsider those decisions, the SBA restates Aunyx's arguments and elaborates on the alleged government mishandling of Aunyx's bid, which Aunyx alluded to but did not discuss in its request for reconsideration.

We believe that SBA is not a proper party to request reconsideration of those decisions, and in any event, its request is untimely under our Bid Protest Procedures. In addition, the arguments that SBA makes have already been made, or could have been made, by Aunyx and considered by this Office during our previous consideration of this case. The substantive questions presented also do not raise issues that are significant to procurement practices or procedures so as to bring into operation our exception to the timeliness requirements.

Our Bid Protest Procedures provide that reconsideration of a decision of the Comptroller General may be requested by the protester, any interested party who submitted comments during consideration of the protest, and any agency involved in the protest. 4 C.F.R. § 21.9(a) (1982). This provision restricts those parties who are eligible to request reconsideration of a decision of this Office, in line with our belief that to the maximum extent possible our decisions should be final, thereby insuring the prompt resolution of protests and the least necessary disruption of the procurement process.

SBA did not participate during our initial consideration of the protest and therefore is not eligible to request reconsideration of our Aunyx decisions. SBA, however, relies on the authority granted to its Office of Chief Counsel by 15 U.S.C. § 634c(4) (1976) to "represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business" for its assertion that we should permit it to represent Aunyx in this matter. While we do not question the Chief Counsel's authority to act as provided by the statute, we do not believe that the statute requires us to consider SBA's request at this point. Rather, we think the Chief Counsel, acting under his statutory authority, should have participated in the protest initially. In any event, as SBA admits, even if we were to agree that it was an eligible party to request reconsideration of our Aunyx decisions, its request would be untimely. Under our procedures a request for reconsideration must be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier.

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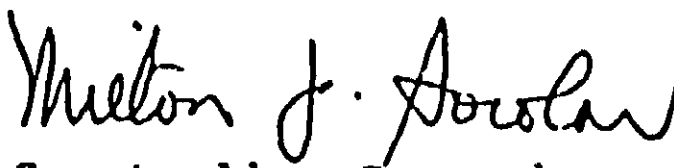
We apply this standard as stringently to agencies of the Government as we do to protesters. Dillon Supply Company, Department of Energy--Request for Reconsideration, B-203937, January 19, 1982, 82-1 CPD 41. Here, SBA's request was filed approximately 3 months after our denial of Aunyx's request for reconsideration. SBA's request, therefore, is clearly untimely.

SBA argues, however, that we should waive our timeliness rules because the questions presented here raise issues which are significant to procurement practices and procedures. We disagree.

In order to invoke the significant issue exception to our timeliness rules, the subject matter of the protest must not only evidence a principle of widespread importance to the procurement community, see, e.g., Willamette-Western Corporation; Pacific Towboat and Salvage Co., 54 Comp. Gen. 375 (1974), 74-2 CPD 259, but must also involve a matter which has not been considered on the merits in previous decisions. CSA Reporting Corporation, 55 Comp. Gen. 330 (1980), 80-1 CPD 225. We have numerous prior decisions setting forth the basic principles that should govern agency consideration of late offers. Berc Inc., B-202615, April 22, 1981, 81-1 CPD 313; ZB Precision Products, Inc., B-187985, May 6, 1977, 77-1 CPD 316. Thus, while we recognize the importance of this matter to the protester, we do not believe the propriety of GSA's rejection of Aunyx's late offer should be considered a "significant issue" within the context of our Bid Protest Procedures.

The request for reconsideration is denied.

SBA has requested a conference in connection with its request for reconsideration. We believe, however, that a conference should be granted in connection with a request for reconsideration only where the matter cannot be resolved without one. In this case, we believe a conference would serve no useful purpose. Aunyx Manufacturing Corporation--Reconsideration, supra.

for 
Comptroller General
of the United States