

GAO

United States General Accounting Office  
Washington, DC 20548

910<sup>0</sup> Office of  
General Counsel

In Reply  
Refer to:

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11047

*[Protest Concerning The Terms of Army Solicitation]*

Dear Mr. [Name]:

Dear Mr. [Name]:

I refer to your letter to our office dated [Date], 1978, with which you forwarded for our consideration correspondence from [Company Name]. Your inquiry concerns the protest filed with our office on May 6, 1978, by its distributor, [Company Name], and [Company Name], and [Company Name].

In that case, [Company Name] protested the terms of solicitation no. [Number], issued by the Sacramento Army Depot (SAD). [Company Name] contended that section "C" of the solicitation was unduly restrictive because only one firm manufactures a surge call system using signal multiplexing technology. The call system was required to operate over a single coaxial cable instead of conventional wiring. A separate coaxial cable was to be provided to meet future needs.

[Company Name] states in its letter to you that [Company Name] wrote the Army on February 17, 1978, requesting a closed conference and special Army agreement to test the surge call system for receipt of initial proposals. [Company Name] did not point out that [Company Name] had filed a protest that it "strongly protest[ed] the restrictive wording in section 'C'." Correspondence submitted by [Company Name] to our office also indicated that [Company Name] wrote the Army on February 23, acknowledging that on that date the Army orally notified [Company Name] that its "requests and suggestions" ([Company Name] letter) were denied. This notwithstanding, [Company Name] appears to have continued to hope that the Army's denial of its position would not serve to prevent consideration of a nonenforcing proposal. On March 22, 1978, the Army wrote [Company Name], disallowing any doubt regarding the Army's view of [Company Name] as a result. [Company Name] was advised



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that its proposal did not meet the Government's requirements for a "single integrated electronic system" and that it otherwise deviated unacceptably from the salient characteristics required by the solicitation.

Nevertheless, Beckwith did not file its protest with our Office until May 2, 1978. We held that the protest was untimely under section 20.2(a) of our RFI Protest Procedures, 4 C.F.R. part 20 (1978), because it had not been filed within 10 days after the Army's denial. Beckwith Electronic Engineering Co., 8-191869, June 12, 1978, 78-1 CPD 428.

Subsequently, Beckwith requested reconsideration of our decision. Beckwith contended that an April 20, 1978, letter from the Army (received April 25) constituted the initial adverse agency action and, therefore, the protest was timely because it was filed in only 8 days. We concluded that the April 20 letter merely repeated the Army's earlier refusal to consider Beckwith's protest and urged Beckwith to submit a revised proposal conforming to the solicitation. Although there was later correspondence between Beckwith and the Army concerning rejection of the proposal, initial adverse agency action occurred on February 23 (oral denial) or, at the latest, March 23 (letter advising Beckwith to amend its proposal). Consequently, reconsideration was denied. Beckwith Electronic Engineering Co.--Reconsideration, 8-191869, August 7, 1978, 78-2 CPD 38.

Although Sukana's reference to these decisions suggests his dissatisfaction with their rationale, the limits for filing protests are necessary to assure that government procurements are not burdened by untimely protests. Tel Norte Technology, Inc., 8-192317, January 27, 1975, 75-1 CPD 53. We have stated in prior decisions that:

" \* \* \* To raise a legal objection to the award of a Government contract is a serious matter. At stake are not only the rights and interests of the protester, but those of the contracting agency 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." Service Distributors, Inc. (Reconsideration), D-186495, August 16, 1976, 76-2 CPD 149.

Section 20.2(c) of our DIB Protest Procedures, 4 C.F.R. part 20 (1978), does permit consideration of untimely protests where good cause is shown or where issues significant to procurement practices are raised.

The good cause exception generally refers to some compelling reason beyond the protester's control, which prevented it from filing a timely protest. See 52 Comp. Gen. 20, 23 (1972); R.A. Miller Industries, Inc. (Reconsideration), D-187183, January 14, 1977, 77-1 CPD 32. No such circumstances were alleged by Peckwith.

The significant issue exception is limited to matters which are of widespread interest to the procurement community and is invoked sparingly so that timeliness standards do not become meaningless. Cf., Catalytic, Incorporated, D-187444, November 23, 1976, 76-2 CPD 445. We saw nothing in the present case to warrant invoking this exception. Our Office has frequently considered protests concerning restrictive specifications in circumstances similar to those alleged by Peckwith. Moreover, it is well settled by our Office that the exclusion of one or more potential offerors from a particular competition does not render a specification unduly restrictive if, in fact, the specification represents legitimate needs of the Government. Memorex Corporation, D-187497, March 14, 1977, 77-1 CPD 187.

Further, Dukane expressed its belief that disclosure of the terms of the contract awarded will aid research in investigating what Dukane views as possible collusion.

Regarding Dukane's desire that the contract terms be disclosed under the Freedom of Information Act, 5 U.S.C. § 552(a)(1) (1976), we understand that the Army sent Beckwith a copy of the contract on November 22, 1978. Further, Beckwith acknowledged receipt by letter dated December 1, 1978, which expressed Beckwith's appreciation for the Army's prompt assistance. If additional information should be needed, Dukane should direct its request to the procuring agency since our Office has no authority under that Act to determine what records must be released by other Government agencies. Dewitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47; Systems Research Laboratories, Inc.-- Reconsideration, 5-196842, May 5, 1979, 78-1 CPD 341.

Finally, the evidence which Dukane and Beckwith have brought to our attention would not in our view justify referral of the matter to the Department of Justice.

As requested, the enclosure to your November 29, 1978, letter is herewith returned.

Sincerely yours,

MILTON SOCOLAR

Gilton J. Socolar  
General Counsel

Enclosure