

DECISION



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

32126

FILE: B-219510.2 **DATE:** August 30, 1985
MATTER OF: Kavouras, Inc.--Reconsideration

DIGEST:

1. GAO will not consider a protest where the protester failed to insure that the procuring agency received a copy of it within 1 day after filing, as required by GAO's Bid Protest Regulations.
2. Protest against restrictive specifications, filed after bid opening, is dismissed as untimely. Further, the issue will not be considered under either the significant issue or good cause exceptions to GAO timeliness requirements, since there has been no showing of a compelling reason beyond the protester's control that prevented the timely filing of a protest, and the protest does not present a unique issue of widespread interest to the procurement community.
3. Protest that award to a certain firm will result in a conflict of interest is academic and will not be considered where that firm did not submit a bid.
4. GAO will not consider a protest alleging violation of Securities and Exchange Commission regulations since that agency has the jurisdiction to determine if its regulations have been violated.

Kavouras, Inc., by letter received in our Office on July 29, 1985, requests that we reconsider our July 24 dismissal of the company's protest concerning Federal Aviation Administration (FAA) invitation for bids (IFB) No. DTFA07-85-B-00131. In the alternative, Kavouras asks that we consider its new submission a new protest.

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We affirm the dismissal, and we will not otherwise consider Kavouras' allegations.

By letter received in this Office on July 16, Kavouras protested that the IFB contained restrictive specifications, and that any bid by Equatorial Communications should not be considered due to a conflict of interest. We dismissed the protest pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1985), because Kavouras did not furnish a copy of the protest to the contracting agency within 1 day after filing it with our Office.

In its request for reconsideration, Kavouras states that it mailed a copy of its initial protest to the contracting agency on July 15, and that the agency therefore should have received the protest by July 17 (1 day after the filing), as required.

The FAA has notified this Office that it first received a copy of Kavouras' initial protest on July 26. The agency believes that it did not receive the protest until this late date because the protest was mailed to the wrong address-- Kavouras mailed the protest copy to the agency at Post Office Box 689, while the solicitation gave the agency's address as Post Office Box 1689. In any case, Kavouras clearly did not meet the noted requirement of our regulations. Consequently, our initial dismissal of Kavouras' protest is affirmed. Marconi Electronics, Inc.-- Reconsideration, 64 Comp. Gen. ____, B-218088.3, Mar. 8, 1985, 85-1 C.P.D. ¶ 289.

Kavouras also requests that, if we affirm our July 24 dismissal, we consider its July 29 submission a new protest. Even if we were to agree to that request, however, we would not consider the merits of the issues raised.

As stated above, Kavouras alleged that the specifications are restrictive of competition and that it would be improper to consider a bid by Equatorial Communications because the firm has a conflict of interest; Kavouras now also contends that Equatorial Communications has violated Securities and Exchange Commission (SEC) regulations on insider trading.

Insofar as Kavouras asserts that the specifications restrict competition, the protest is untimely. A protest that specifications are unduly restrictive concerns an

impropriety apparent on the face of a solicitation and, under our Bid Protest Regulations, must be filed before the date and time set for bid opening. 4 C.F.R. § 21.2(b)(1). Although Kavouras states that bid opening has not yet taken place, the FAA has notified this Office that bid opening in fact took place on July 18. Since we did not receive Kavouras' protest against the specifications until July 29, it is untimely and we will not consider it on the merits. Sellers Engineering Co., B-217527, Jan. 17, 1985, 85-1 C.P.D. ¶ 51.

Kavouras alternatively requests that we consider this issue pursuant to the timeliness exceptions in our regulations where good cause is shown or the protest raises an issue significant to the procurement community. See 4 C.F.R. § 21.2(c). The good cause exception is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest, Morrison-Knudson Co., B-209609, Mar. 10, 1983, 83-1 C.P.D. ¶ 245, which is not the case here. The significant issue exception is for untimely protests that raise issues of widespread interest to the procurement community and is used sparingly so that our timeliness standards do not become meaningless. Where the merits of a protest involve issues we have previously considered, the issues are not significant; we have considered protests involving restrictive specifications in many prior decisions. See, e.g., Eaton Leonard Corp., B-215593, Jan. 17, 1985, 85-1 C.P.D. ¶ 47.

Kavouras' protest that the acceptance of a bid by Equatorial Communications results in an illegal conflict of interest is based on the allegation that Martin Marietta Corporation recently has purchased 25 percent of Equatorial Communications. According to Kavouras, Martin Marietta is party to a contract with the FAA containing a Conflict of Interest clause which prevented Martin Marietta from responding to the current IFB.

The FAA has informed this Office that Equatorial Communications did not submit a bid on the IFB, but rather is a potential subcontractor to a bidder. Consequently, Kavouras' protest on this matter is academic and will not be considered.

Finally, Kavouras asserts that Equatorial Communications has violated the SEC regulations on the use of insider information. Kavouras has not explained this

allegation and, in any event, the authority to determine whether SEC regulations have been violated rests with that agency, not our Office. See 15 U.S.C. § 78u(a) (1982). Consequently, this Office will not consider the matter.

Our July 24 dismissal is affirmed, and the protest otherwise is dismissed.

Kavouras also requests reimbursement for the costs it incurred in submitting a bid and pursuing its protest with this Office. Since the FAA has not violated any applicable procurement statutes or regulations, these costs are not recoverable. 4 C.F.R. § 21.6(d).

for *Raymond Egan*
Harry R. Van Cleve
General Counsel