

DECISION

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

FILE: B-220918.2 **DATE:** November 20, 1985
MATTER OF: Progressive Surveillance Systems Corp.--
Reconsideration

DIGEST:

Adverse agency action on a protest filed with the contracting agency, which begins the 10-working-day period for filing a subsequent protest with GAO, is any action or inaction that is prejudicial to the protester's position. The fact that a protester continues to pursue its complaint with the contracting agency after such action does not toll the 10-day period.

Progressive Surveillance Systems Corp. (PSS) requests that we reconsider our decision in Progressive Surveillance Systems Corp., B-220918, Oct. 31, 1985, 85-2 C.P.D. ¶ _____, in which we dismissed as untimely the firm's protest against the issuance of amendment 0008 to Department of the Navy request for proposals No. N00244-84-R-4767. PSS had complained that the amendment may have been issued for the sole benefit of the company that ultimately was awarded the contract. We affirm our decision.

The record showed that PSS had filed an earlier protest on the matter with the Navy by letter of September 13. The basis for protest was that amendment 0008, which relaxed certain specifications, was issued by the contracting office without technical input from personnel at the using activity. In a September 20 letter, the Navy advised that review of the complaint established that the using activity, in fact, had been involved in the matter and that the amended solicitation requirements accurately reflected the Navy's needs.

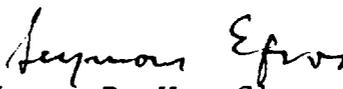
PSS then wrote the Navy another letter, dated October 1, disputing the advice that the using activity had requested the specification changes and requesting that contract performance be suspended pending further investigation by the Navy. In an October 11 letter, the Navy basically repeated its earlier position, although in slightly more detail.

We dismissed PSS's subsequent protest to our Office because it was filed on October 28, more than 10 working days after PSS learned of the Navy's initial adverse action on the protest at that level as reflected in the September 20 letter. See 4 C.F.R. § 21.2(a)(3) (1985). In requesting reconsideration, PSS questions our characterization of the Navy's September 20 letter as adverse agency action and argues that the timeliness of the protest to our Office should be measured from PSS's receipt of the Navy's October 11 letter.

Adverse agency action is any action or inaction that is prejudicial to the position taken in a protest filed with the agency. Media Associates Inc., B-211153, Apr. 12, 1983, 83-1 C.P.D. ¶ 385. The Navy's September 20 advice to PSS that the protester's factual basis for the firm's complaint was wrong clearly meets that standard. Moreover, the fact that a protester continues to pursue its complaint with the contracting agency does not toll the period for filing with our Office. Leon's Auto Repair, B-215625, July 20, 1984, 84-2 C.P.D. ¶ 74.

In any case, we point out that not only is PSS's protest about the motive behind amendment 0008 based entirely on speculation but the effect of the amendment was to relax the minimum acceptable requirements stated in the solicitation. In view of statutory requirements to broaden competition, an allegation like PSS's, that an agency has revised a solicitation to include more firms in the procurement, generally does not involve a matter of legal concern. See Gentex Corp., B-209083, Apr. 13, 1983, 83-1 C.P.D. ¶ 394.

Since PSS has not demonstrated that our initial decision was legally or factually wrong, the request for reconsideration is denied. 4 C.F.R. § 21.12(a) (1985).

for 
Harry R. Van Cleve
General Counsel