

DOCUMENT RESUME

02645 - [A1652635]

[Request for Reconsideration of Decision concerning Untimely Protest against Unduly Restrictive Solicitation]. B-188830. June 3, 1977. 2 pp.

Decision re: Microsurance, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Small Business Administration: Size Appeals Board.

Authority: 4 C.F.R. 20.2(b)(2). B-187083 (1976).

The protester requested reconsideration of a decision denying consideration of the merits of a protest because it was untimely filed. Even if GAO had accepted the protester's position that the restrictiveness of the invitation for bids was not apparent until the identities of the bidders were known, the protest was untimely since it was not filed within 10 days after the basis of the protest was known. The prior decision dismissing the protest was affirmed. GAO has no authority to direct a contracting officer to withhold an award pending an appeal to the Small Business Administration's Size Appeals Board. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540**

FILE: B-188830

DATE: June 3, 1977

MATTER OF: Microsurance, Inc.--Request for Reconsideration

DIGEST:

1. Protester requested reconsideration of prior decision dismissing protest which alleged that IFB was unduly restrictive but was not filed until after bid opening. Even if GAO accepts protester's position that restrictiveness of IFB was not apparent until identities of bidders were known, protest is untimely since it was not filed within 10 days of when protester should have known of basis for protest. Prior decision dismissing protest is affirmed.
2. GAO has no authority to direct contracting officer to withhold award pending appeal to SBA Size Appeals Board.

Microsurance, Inc. (Microsurance) has requested reconsideration of Microsurance, Inc., B-188830, April 28, 1977, 77-1 CPD 292, where we declined to render a decision on the merits of Microsurance's protest because it was untimely filed. The basis for finding the protest untimely lay in our conclusion that the issue raised, whether three separate requirements of the solicitation operated collectively to eliminate competition, concerned an alleged impropriety in the solicitation which ought to have been apparent prior to bid opening.

Microsurance now contends:

"* * * that it was impossible to fully be aware of the prejudices in this solicitation against all bidders but one. We claim that only after all the bids were opened and analyzed could such a protest be valid, because each bidder had to be known before the bid opening and checked out against the three separate requirements in question."

Microsurance asserts that it would meet all three criteria alleged to be restrictive if it is successful in appealing a determination

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that it is not a small business for purposes of this procurement. The protester states that of the remaining four bidders, only one meets all the criteria. Therefore, Microsurance's argument that the solicitation is unduly restrictive is premised on its belief that, at most, two of the five bidders can qualify for award. We note, however, that we have received a letter from a third bidder expressing the opinion that the IFB requirements are reasonable.

Even if we accept Microsurance's position that the restrictive nature of the IFB was not apparent until the bidders' identities were known, the protest is untimely. We are advised that bid opening was on February 4, 1977, over a month before Microsurance's protest was initially filed with our Office on April 13, 1977. Our bid protest procedures provide that protests other than those involving improprieties apparent on the face of solicitations "shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." 4 C.F.R. § 20.2(b)(2) (1976). Microsurance's protest does not meet this standard.

Microsurance also has protested award to any other bidder until the Small Business Administration's (SBA's) Size Appeals Board has rendered a decision on Microsurance's size status. This aspect of Microsurance's protest is not for our consideration. Size standard issues are within the province of SBA, and our Office has no authority to direct a contracting officer to withhold an award pending appeal to the SBA Size Appeals Board. E.I. Kane, Inc., B-187083, August 23, 1976, 76-2 CPD 183.

For the foregoing reasons, we remain of the opinion that the protest is inappropriate for consideration by our Office. Accordingly, the decision of April 28, 1977, is affirmed.


Deputy Comptroller General
of the United States