

116942

Chart

DECISION



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

20135-

FILE: B-199547.3

DATE: December 1, 1981

MATTER OF: Kirschner Associates, Inc. -- Agency Request  
for Reconsideration

DIGEST:

1. Where initial protest submission raises issue of improper cost realism analysis, additional materials submitted in support of timely protest issue will be considered. The additional materials only provide the rationale for the protest basis clearly stated in the initial protest and do not constitute a piecemeal development of protest issues.
2. In deciding a protest, GAO is not confined to issues raised by parties to protest. Where procurement deficiency is obvious from a review of agency's report on protest, GAO will state views and make recommendations if appropriate.

The Department of Health and Human Services (HHS) requests reconsideration of Kirschner Associates, Inc., B-199547.2, August 26, 1981, 81-2 CPD 178. In that decision, we sustained Kirschner's protest because, among other things, we did not believe that HHS conducted a proper cost realism analysis of proposals in response to request for proposals No. ROV-ACYF-80-0002, a solicitation for training and technical assistance to Head Start Program grantees.

HHS contends that Kirschner first articulated the issue of improper cost realism analysis in correspondence received in our Office several months after the initial protest submission. HHS argues that we should not have considered the cost realism issue, which was known to Kirschner at the time of initial protest submission, because the issue was untimely raised under our Bid Protest Procedures.

019531

In our view, however, Kirschner's initial protest, while not expressly using the phrase "improper cost realism analysis," clearly raised the issue when it stated:

"\* \* \* the contract was awarded for a cost to the Government of approximately 73 % of the Kirschner Associates, Inc. proposed amount \* \* \*. This is simply astonishing, since we are intimately familiar with the requirements for \* \* \* a contract of this kind by virtue of having performed several similar ones during the past four years.

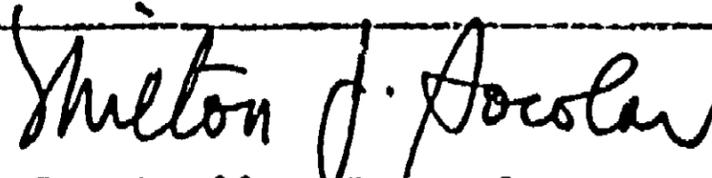
\* \* \* \* \*

"\* \* \* our cost proposal could not have been so far out of line from the successful \* \* \* price unless \* \* \* the successful contractor\* \* \* materially misrepresented the costs."

With this issue established in the initial submission, material subsequently submitted by Kirschner during the development of the protest which supported the cost realism issue was timely. The subsequent Kirschner submissions did not constitute a piecemeal protest, but rather they provided additional rationale for a protest basis clearly stated in the initial protest. Memorex Corporation, B-200722, October 23, 1981, 81-2 CPD \_\_\_.

In any event, we do not consider ourselves confined to address only the issues raised by parties to a protest over the award of a Federal contract. See, for example, Redifon Computers Limited--Reconsideration, B-186691, June 30, 1977, 77-1 CPD 463. Where, as here, the improper cost realism analysis issue was obvious from our review of the contracting agency's report on the protest, we will state our views and make recommendations if appropriate. See Association of Soil and Foundation Engineers--Reconsideration, B-200999.2, May 11, 1981, 81-1 CPD 367.

Our prior decision is affirmed.

*for*   
Comptroller General  
of the United States