



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logue Boston Limited Partnership--
Reconsideration

File: B-246796.2

Date: July 2, 1992

Edward J. Logue for the protester,
Ralph O. White, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Prior decision of the General Accounting Office (GAO) dismissing as untimely a protest challenging the terms of a solicitation filed after the closing date for receipt of initial proposals is affirmed because protester's contention that GAO waived its right to dismiss the protest by developing the case and requesting an agency report has no merit and does not state a basis for reconsideration of our prior dismissal.

DECISION

Logue Boston Limited Partnership requests that we reconsider our prior decision dismissing its protest, Logue Boston Limited Partnership, B-246796.3, Mar. 27, 1992, 92-1 CPD ¶ 316; as untimely. In that protest, Logue challenged award to any other offeror under solicitation for offers (SFO) No. 2-PXE-2204, issued by the General Services Administration (GSA) for the lease of office space in downtown Boston, Massachusetts. According to the protester, we waived the right to dismiss the protest as untimely because we opened a file on the protest and directed the agency to submit a report on the challenged procurement.

We affirm our prior dismissal.

As explained in our prior decision, the SFO here was the third solicitation by GSA for office space for the Federal Bureau of Investigation's (FBI) Boston Office; the two earlier solicitations were canceled. After closely following developments under the two prior attempts to procure this space, Logue failed to submit a timely protest in response to the third solicitation. Specifically, the third SFO required submission of initial proposals by November 12, 1991. Even though Logue apparently prepared

its protest letter on November 5, it used the wrong zip code for the address of our Office. The protest letter was not received in our Office until November 25, nearly 2 weeks after GSA received proposals.

After receiving Logue's protest letter, we responded with a letter, dated December 2, which acknowledged receipt of the protest and delineated the procedure and deadlines for filing the agency report and the protester's deadlines for filing comments on the report. The letter stated that the agency report was due on January 3, 1992, and advised the protester that it was required either to submit written comments in response to the report, or to advise our Office that it desired to have the protest decided on the existing record. The letter made no comment whatsoever regarding the merits of Logue's protest.

According to Logue, since we did not immediately dismiss the protest, and instead directed GSA to produce an agency report, we waived the right to dismiss Logue Boston's protest as untimely.

Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1992); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. These deadlines in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Green Mgmt. Corp.--Recon., B-233598.2, Feb. 27, 1989, 89-1 CPD ¶ 208.

To meet our mandate, we notify agencies of new protests by telephone within 1 day of the filing of a protest. 4 C.F.R. § 21.3(a). Unless a new protest is summarily dismissed pursuant to the provisions of 4 C.F.R. § 21.3(m), we prepare the letter received by the protester in this case to acknowledge receipt of the protest. In addition, we prepare a similar letter to the agency confirming its obligation to provide a report in response to the protest within 25 days of receipt of the telephonic notification.

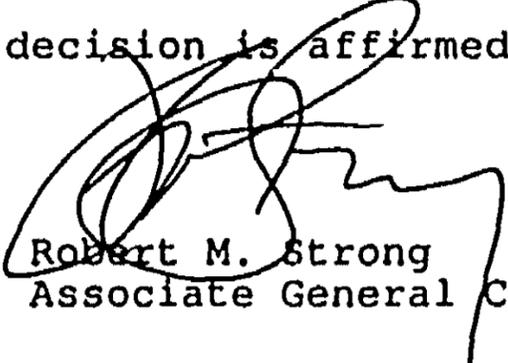
Here, the decision to not immediately dismiss Logue's protest was based on a concern that something may have been overlooked--either by Logue, GSA, or our Office. Given Logue's previous expression of interest in this procurement (via a protest), and given that an attorney in our Office explicitly cautioned Logue that any challenge to the new solicitation must be received prior to the proposal

submission date,¹ our Office was surprised to receive a challenge to the terms of the solicitation nearly 2 weeks after the due date for proposals. Rather than assume that Logue had missed the filing deadline, however, our Office considered the possibility that we had received the letter earlier and had misplaced it. After receiving the agency report and learning that no prior copy of the protest had been filed, and that the protest apparently was received late because it was misaddressed, we dismissed the protest as untimely.

Our decision to develop a protest, as opposed to summarily dismissing it, does not represent a final determination that the protest complies with our procedural requirements such as timely filing. Rather, where there is some doubt about whether a protest should be summarily dismissed, we will err in favor of the protester and begin the process. This practice gives the parties and our Office the opportunity to clarify an initially unclear record while preserving our ability to meet the statutory deadline for deciding protests. This decision does not preclude us from dismissing the protest at some later date should we conclude that dismissal is the appropriate resolution. See 4 C.F.R. § 21.3(m) (stating that when the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by our Office, we will dismiss the protest at that time).

The protester has not refuted the fact that its protest was filed late, and we will not reconsider our decision to dismiss the protest as untimely. In addition, Logue's complaint that it was never provided a copy of the interested party's notice of appearance letter does not form a basis for reconsidering our prior decision.

The decision is affirmed.



Robert M. Strong
Associate General Counsel

¹With its request for reconsideration, the protester provides copies of its notes of an October 22, 1991, conversation with the attorney handling the case. These notes reflect that the attorney advised Logue's representative that any challenge to the solicitation was due prior to the date for submission of proposals.