



Comptroller General  
of the United States

340303

Washington, D.C. 20548

## Decision

**Matter of:** BFGoodrich Company--Reconsideration

**File:** B-258836.4; B-258838.3; B-258839.3;  
B-258840.3; B-258841.3; B-258842.3;  
B-258843.3; B-258986.2

**Date:** March 28, 1995

Albert C. Ruehmann III, Esq., for the protester.  
Anthony E. Marrone, Esq., Department of the Navy, for the  
agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Request for reconsideration is denied where the protester  
does not show that the decision was erroneous or present new  
evidence that would warrant reversal of previous dismissal.

### DECISION

BFGoodrich Company requests reconsideration of our  
October 26, 1994, dismissal of its protests of a number of  
solicitations issued by the Department of the Navy for F/A  
18 landing gear.<sup>1</sup> BFGoodrich protested the inclusion in  
each solicitation of a requirement that the offeror obtain a  
license from the original equipment manufacturer. Because  
each protest alleged an impropriety that was apparent in the  
respective solicitation prior to the closing date for  
receipt of initial proposals but, in each case, the protest  
was filed after the solicitation's closing date, we  
determined that the protests were untimely under our Bid  
Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995), which  
require protests of apparent solicitation improprieties to  
be filed prior to the closing time. We deny the request for  
reconsideration.

<sup>1</sup>The bid protest reference numbers (and associated  
solicitation numbers) are: B-258836.2 (N00383-94-R-D239);  
B-258838.2 (N00383-94-R-D240); B-258839.2 (N00383-94-R-  
D272); B-258840.2 (N00383-94-R-D273); B-258841.2 (N00383-94-  
R-D267); B-258842.2 (N00383-94-R-D271); B-258843.2 (N00383-  
94-R-D238); and B-258986 (N00383-94-R-D266).

BFGoodrich contends that we mistakenly did not consider two letters that it had sent to the contracting activity prior to the closing date for receipt of initial proposals to be agency-level protests. BFGoodrich asserts that it should have been clear that the letters were intended to be protests of inclusion of the licensing requirement in all Navy procurements for F/A 18 landing gear. BFGoodrich contends that, since it had protested to the contracting agency in a timely manner, its subsequent protests to our Office were also timely.

BFGoodrich sent two letters (dated August 1 and 8, 1994) concerning the licensing requirement to the contracting activity. BFGoodrich's August 1, 1994, letter to the Navy specifically listed eight Navy solicitations that contained the licensing requirement while its August 8 letter did not list any. Solicitation Nos. N00333-94-R-D239 and N00383-94-R-D273 (protest Nos. B-258836.2 and B-258840.2, respectively) were not among the listed solicitations. Therefore, because solicitation Nos. N00383-94-R-D239 and N00383-94-R-D273 were never protested to the Navy, the post-closing protests of these two solicitations to our Office were untimely, and BFGoodrich's argument for reconsideration on the basis that it had previously protested to the Navy clearly is not relevant to our dismissals of protests B-258836.2 and B-258840.2.

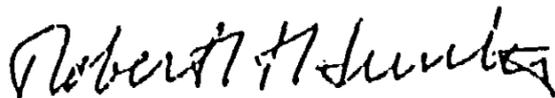
The other six solicitations were, in fact, listed as references in BFGoodrich's August 1 letter to the contracting activity. However, we do not agree with BFGoodrich's characterization of its letters to the Navy as protests. As we pointed out in our prior decision, neither letter stated that BFGoodrich was protesting and, after reading both letters in their entirety, we concluded that they were not protests. In this connection, we note that the Navy also did not consider the letters to be protests. As we noted in our dismissal, the August 1 letter discussed the fact that BFGoodrich was negotiating with the original equipment manufacturer for a licensing agreement and stated that BFGoodrich only took exception to the licensing requirement "until [BFGoodrich] reaches an equitable agreement with McDonnell Douglas." In our opinion, nothing in either letter contained a clear statement indicating that BFGoodrich was protesting the requirement.

In addition, as we also pointed out in our dismissal, by letter of August 3, the contracting officer responded to BFGoodrich's August 1 letter and indicated that the licensing requirements would not be deleted or modified. BFGoodrich now argues that its letter and the contracting

officer's crossed in the mail and, therefore, the contracting officer's letter was not really in response to BFGoodrich's August 1 letter as the Navy claims. There is no merit to this argument.

Even if BFGoodrich's August 1 letter to the Navy was a protest, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3), BFGoodrich would have had to file its protest in our Office within 10 working days after receiving the contracting officer's August 3 letter (stating that the license requirement would be maintained) as that letter was the initial adverse agency action on the agency-level protest. See 4 C.F.R. § 21.0(f). Moreover, the closing dates for receipt of initial proposals (August 9 for one of the solicitations and September 22 for all others) also represented adverse agency action on BFGoodrich's alleged agency-level protest. See Tony's Fine Foods, B-254959.2; B-254961.2, Jan. 31, 1994, 94-1 CPD ¶ 51. Since BFGoodrich did not file its initial protest in our Office until October 14, 1994, more than 10 working days after either receipt of the contracting officer's letter or the last of the closing dates, the protests clearly were untimely.

Since BFGoodrich has not shown that our original decision was erroneous or submitted new information that would warrant reversal of our decision, the request for reconsideration is denied. 4 C.F.R. § 21.12(a); Brunswick Corp., Defense Div.--Recon., B-250695.2, Mar. 9, 1993, 93-1 CPD ¶ 214.



*RM* Robert P. Murphy  
General Counsel