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Fitzmaurice

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

May 26, 1981

B-203056

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The Honorable Carl Levin
United States Senate

Dear Senator Levin:

We refer to your letter of April 13, 1981, which enclosed correspondence concerning the protest of American Office Products Inc. (American), against the rejection of its bid by the General Services Administration (GSA) under invitation for bids No. 2FC-RJR-A-A0426Q.

A review of the correspondence reveals that American was the apparent low bidder on a number of line items under this procurement for xerographic paper. However, GSA found American's financial status to be unsatisfactory and, as a result, determined American to be a nonresponsible bidder. This determination was made on August 7, 1980. Since American is a small business, GSA was required to refer this matter to the Small Business Administration (SBA) for possible issuance of a certificate of competency (COC).

In the meantime, American had encountered some difficulty with its paper supplier. After finding a new supplier, the firm requested permission from GSA to make some price changes in its bid on the grounds that a mistake in bid had occurred. As American was making this claim to GSA, the firm was contacted by a representative of SBA about filing for a COC. American asked for a postponement of this filing on account of its claim of mistake and apparently was under the impression that SBA would allow such a postponement. However, SBA did not extend the filing deadline and notified GSA on August 21, 1980, that American had failed to file for a COC. In light of this, GSA considered its initial nonresponsibility determination to be final and made award to another bidder.

[Protest of Bid Rejection as Nonresponsible]
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At this point, correspondence began between American and GSA and between yourself and GSA. Assuming that this correspondence was a protest filed with the contracting agency against the rejection of American's bid, it appears that by letters of January 21 and 23, 1981, GSA denied the protest, stating that the rejection of American's bid was proper. After further correspondence between yourself and American in March 1981, you referred this matter to our Office.

Our Bid Protest Procedures, 4 C.F.R. § 20.2(a) (1980), provide that where a protest has been initially filed with the contracting agency, any subsequent protest to our Office will only be considered if filed within 10 working days of formal notification of initial adverse agency action. Therefore, assuming that American's protest with GSA was timely filed, the notification of initial adverse agency action was the GSA letters of January 21 and 23, 1981. American then had 10 working days to file a protest in our Office. Since no protest was received by our Office within 10 days, any subsequent protest to our Office would be untimely.

Concerning the applicability of our Bid Protest Procedures to protests filed by or referred to our Office by Members of Congress, no protest will be considered on its merits if untimely filed, regardless of the source of the protest, unless one of the exceptions in 4 C.F.R. § 20.2(c) is applicable. This policy enables our Office to decide an issue while it is still practicable to take effective action with respect to the procurement where the circumstances warrant. We are unable to do so if a protest is filed after what we consider to be a reasonable time for the filing of a protest. Moreover, if our Office were to consider an untimely protest on the merits when submitted by a Member of Congress, this would suggest to the procurement community that the timeliness provisions of our Bid Protest Procedures can be circumvented by submitting the protest through a Member of Congress.

Section 20.2(c) of our Bid Protest Procedures provides that for good cause shown or where there are issues significant to procurement practices or procedures, our Office may consider any protest which is not timely filed. The good cause exception, however, is limited to circumstances where some compelling reason beyond the protester's control prevents the filing of a timely protest. American has not alleged any facts which show that it was prevented from filing a timely protest. The significant issue exception is limited to issues of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. Since we have considered the issues raised here many times before, this exception is also inappropriate. Consequently, the protest will not be considered on the merits.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States